From: **Julia WIlliams** juliawilliams@clintonlaw.net
Subject: Re: Mast deposition
Date: June 22, 2020 at 1:45 PM
To: Paul Dulberg Paul_Dulberg@comcast.net
Cc: Ed Clinton ed@clintonlaw.net, Mary Winch marywinch@clintonlaw.net

JW

Dear Ed and Paul,

I have attached an outline of the questioning and the exhibits we will use for the deposition—this is an ongoing work product and will serve as our source of discussion tomorrow.

Please note that all of the questions listed and the exhibits listed may NOT be used in the deposition. It is simply an outline of topics/etc that I intend to cover. Depending on Mast's answers, things may change. It is my intention to focus on the work around the McGuire claim. As Paul was able to go to arbitration and recover on the Gagnon claim, there is not a question of Gagnon's liability. The damages do not stem from the claim regarding Gagnon as that claim was won at arbitration. The crux of the claim is that the McGuires would have been found liable for failing to supervise Gagnon and thus would have been required to pay, jointly and severally, for the damages.

Here is the information to call in tomorrow:

Dulberg Case Mast Deposition Preparation Call

Tue, Jun 23, 2020 2:00 PM - 2:30 PM (CDT)

You dial in using your phone.

United States: +1 (872) 240-3311

Access Code: 468-503-221

Best Regards,

Julia Williams
Of Counsel
The Clinton Law Firm
111 W. Washington, Ste. 1437
Chicago, IL 60602
P:312.357.1515
F: 312.201.0737
juliawilliams@clintonlaw.net

This message may be privileged and confidential. If you are not the intended recipient, please delete the email and notify the sender immediately.

Click to Download
Dulberg Mast deposition questions 2020 June 22.docx
29 KB

Click to Download
Dulberg Mast Dep Exh 1 Retainer Contract.pdf
64 KB

Click to Download
Dulberg Mast Dep Exh 2 Complaint.pdf
349 KB

Click to Download
Dulberg Mast Dep Exh 3 Intake Memo .pdf
149 KB

Click to Download
Dulberg Mast Dep Exh 4 Letter Re settlement offer $7,500.pdf
89 KB

Click to Download
Dulberg Mast Dep Exh 5 Mast Email 2013 Oct 30.pdf
92 KB

Click to Download
Dulberg Mast Dep Exh 6 Email 2013 Nov 18.pdf
99 KB

Click to Download
Dulberg Mast Dep Exh 7 Letter w settlement offer 2013 Nov 18.pdf
65 KB

Click to Download
Dulberg Mast Dep Exh 8 Memo 2013 Nov 20 re mtg.pdf
57 KB

Click to Download
Dulberg Mast Dep Exh 9 Emails Dulberg Mast 2013 Nov 20.pdf
205 KB

Click to Download
Dulberg Mast Dep Exh 10 memo re settlement acceptance 2013 Dec .pdf
34 KB

Click to Download
Dulberg Mast Dep Exh 11 settlement acceptance.pdf
55 KB

Click to Download
Dulberg Mast Dep Exh 12 Legal Research .pdf
35.1 MB

Click to Download
Dulberg Mast Dep Exh 13 McGuire Interrog Answers.pdf
719 KB

Click to Download
Dulberg Mast Dep Exh 14 Gagnon Interrog Answers.pdf
329 KB

Click to Download
Dulberg Mast Dep Exh 15 Gagnon Policy.pdf
9.8 MB

Click to Download
Dulberg Mast Dep Exh 16 Motion to Withdraw.pdf
153 KB

Click to Download
Dulberg Mast Dep Exh 17 WIlliam McGuire Dep.pdf
585 KB

Click to Download
Dulberg Mast Dep Exh 18 Memo re William Dep.pdf
133 KB

Click to Download
Dulberg Mast Dep Exh 19 Carolyn McGuire Dep .pdf
4.7 MB

Click to Download
Dulberg Mast Dep Exh 20 Carolyn McGuire Dep Memo.pdf
181 KB

Click to Download
Dulberg Mast Dep Exh 21 Gagnon Dep.pdf
9.5 MB

Click to Download
Dulberg Mast Dep Exh 22 Gagnon Dep Memo.pdf
273 KB

Click to Download

Dulberg Mast Dep Exh 23 Emails re Gagnon Value 2015 Mar 12.pdf
206 KB

> On Jun 18, 2020, at 9:24 AM, Paul Dulberg <Paul_Dulberg@comcast.net> wrote:
>
> Hi Julia,
>
> Please find the attached evidence_list.txt and questions_for_mast.txt that we wish to discuss with you next week before Masts deposition.
>
> Thank you and stay safe,
> Paul
>
> <evidence_list.txt><questions_for_mast.txt>

Questions for Mast:

Swearing in of witness
Court Reporter will read a statement into the record regarding the remote nature of the proceeding. The court reporter will also request that the witness produce a government issued ID to verify his/her identify by holding it up to the camera before the commencement of proceedings.

This is the discovery deposition of Hans Mast taken pursuant to all applicable rules and notice in the case of Dulberg v the Law Offices of Thomas Popovich et al. This deposition is being taken for the purposes of discovery.

Opening Questions:

1. Please state your name for the record.
2. Have you had your deposition before? How many times?
3. Have you taken depositions before? How many?
4. You agree that if I ask you a question that you do not understand, you will tell me and I'll rephrase it or clarify the question.
5. If you answer a question, I will assume that you understood the question.
6. If you need to take a break, please let us know and we will break; I just ask that you do not take a break while a question is pending.
7. Please answer questions orally, not with gestures or head nods as non-verbal communication cannot be recorded by the Court Reporter.
8. We'll both do our best not to talk over each other.
9. Can you please confirm that you are the only person in the room with you?
10. Can you identify any other person in the room?
11. What electronic devises do you have with you? Can you please silence or turn off those devises and place them in a location that cannot be accessed during the deposition.
12. If at any time during the deposition you take notes or otherwise communicate with someone during the deposition (other than on agreed upon breaks), we ask those notes and communications be produced. If need be, we will issue further discovery for those notes and communications.

Professional History/preparation:

1. Did you do anything to prepare for this deposition today?
2. Review notes?
3. Review documents?
4. Met with counsel? (I don't want to know the content of that meeting—just what you did to prepare)
5. Met with anyone else?
6. Talk with anyone else about the case prior to today's deposition?

7. Where did you go to law school?
8. When did you graduate?
9. Where are you admitted to practice?
10. Have you ever been reprimanded or disciplined by any court?
11. Have you ever been publically reprimanded or disciplined by any oversight body?
12. When did you start practicing?
13. Where did you practice?
14. Job History?
15. When did you join the Law Offices of Thomas Popovich?
16. When did you leave the Law Offices of Thomas Popovich?
17. What was the reason for leaving?
18. What type of cases do you handle?
19. Is that reflective of your practice throughout the years?

Discovery in Malpractice Case:

20. You responded to discovery in this case correct?
21. You reviewed the responses and documents?
22. In the document response electronic files there were black pages, do you recall seeing that?
23. Can you explain why there were black pages between?
24. They were not redactions correct?
25. You produced all the document in your possession and control correct?
26. All the emails and electronic communications correct?

Personal Injury Case:

27. When were you retained by Dulberg?

28. What you retained to do?

    a. Retainer Agreement Pop 586 Exh 1

29. Did you file the initial complaint against David Gagnon, Caroline McGuire and William (Bill) McGuire on May 12, 2012?

    Doc Pop 1163 Exh 2

30. What was the case about?

31. Dulberg was injured on June 28, 2011 according to the complaint correct?

32. What was your theory of the case against each defendant?

33. You completed an intake memo correct?

34. Here is a copy of the memo
    a. Doc Pop 961. Exh 3

35. There is a note on this memo, do you recognize it?
36. Can you tell me what it says?
37. Who wrote it?
38. To whom was it written?
39. What is the context of it?
40. What does it mean?
41. Did the homeowner's policy pay for the medical treatment of Dulberg during the case?
42. Did you request it?
43. Do you have any documents showing that request?

44. What was the defense of each defendant as you understood it?

45. What was your opinion of the defense?

46. What was that based upon?

47. Was there anything in particular about the depositions that stood out to you?

Settelment Questions:

48. When was the first time you talked to Paul about settling the claims against the McGuire's?

49. Do you have a memo, notes, or an email about that conversation?

50. October 22, 2013, Settlement offer of $7500?
    a. Pop Doc. 192 Exh 4

51. Do you have any memo, notes, email, or other information about the conversation you had with Dulberg prior to the Oct 22, 2013 settlement offer that show he consented to that settlement offer?

52. October 30, 2013, Mast informed Paul of issues with case--
    a. Pop Doc 195 Exh 5

53. Did you meet with Paul Dulberg in your office on or around November 4, 2013?
54. What was that meeting about?

55. It was your opinion that William and Carolyn McGuire did not have any legal liablity in the case, correct?
    a. Pop 181-182 (email to Paul) Nov 18, 2013 Exh 6

56. You told Paul you didn't think they had any liability correct?
    a. Pop Pop 181-182 (email to Paul) Nov 18, 2013 Exh 6

57. McGuire offer Paul $5K? November 18, 2013
    a. Pop 667. Letter from McGuire to Paul re $5K Exh 7

58. Paul and Mast meeting in office Nov. 20, 2013?
    a. Memo re meeting Pop 000003 Exh 8
    b. Emails re meeting Exh. 9

59. Memo to File re acceptance—
    a. Pop 884 Dec. 20, 2013—Paul and Hans spoke over phone and accepted. Exh 10

60. Paul accepted that offer? December 26, 2013
    a. Pop 670 Accpetance Letter Exh 11

61. What was that advice based upon?
62. Did you do any legal research re that opinion?
63. Did you draft a memo to the file?
64. Did you provide this legal research to Dulberg?
    a. Dulberg 301-305; 204-225. Exh 12

65. Did you talk to Paul about Gagnon claims?

66. When was the first time you advised about the Gagnon claims?

67. What did you advise?

68. Where there any memos about settling with Gagnon?

69. What about the liability of Gagnon prior to accepting the McGuire settlement?

70. McGuire Policy?

71. Did you ever advise Paul as to the limits of the McGuire policy?

    a. Dulberg 162-175 McGuire Answers to 213 Interrogs dated 8/6/2012 Ehx 13
    b. Paragraph 15 answers the insurance questions (but doesn't provide the policy)

c. $300K limit

72. Did you ever obtain a copy of the McGuire policy?

73. Did you request a copy of the Gagnon Insurance Policy?

74. Did you obtain a copy of the Gagnon policy?

75. Did you issue interrogatories to Gagnon?

76. Did he respond?

a. Doc. Dulberg 176-177 Gagnon interrogatory answers from McGuire's Exh 14

77. Did you provide Paul with a copy of the Gagnon policy?

a. Dulberg 11-123 Exh 15

78. Did you provide him with the policy limits?

Bankruptcy

1. Did you advise Dulberg to file for bankruptcy?
2. What discussion did you have with Dulberg re bankruptcy?

79. You filed a Motion to Withdraw on March 13, 2015?

(Doc Pop 970) Exh 16

80. Was it granted that day?

3.

William McGuire Deposition Exh 17/Memo re dep Exh 18

4. You took the deposition of William McGuire correct?
5. What was your impression of William McGuire at the time of the deposition?

(Doc Pop 933-934 Mast Memo to File re William McGuire Deposition)

Impression that William was pleasant and credible witness

6. Williams purchased the chainsaw at issue in the case between Paul Dulberg, David Gagnon, William McGuire and Caroline McGuire, correct?

   Doc Pop 1437-1455 William McGuire Deposition
   Doc. 1438 P.7-8 of the deposition. William testifies that he bought the chainsaw, but never used it himself. He did purchase it for his personal use.
   Doc 1439 p 9. William bought it and would have allowed the kids to use it.

7. William testified that the chain saw was used by David Gagnon some time in 2011 prior to the accident that was the subject of the case between Dulberg, Gagnon, Mcguires?

   Doc 1439 P. 11. William deposition

8. Williams testified that Paul helped Gagnon that earlier time too?
   Doc 1439 P. 11-12 William's Deposition

9. The day of the accident William testified that he was in the house correct?
   Doc. 1443, p. 26-27

10. William testified that he did not see the accident correct?
    Doc. 1445 P. 34-35

11. Was there anything in particular about William's deposition that indicated to you that he may not be held responsible for Dulberg's injury?

Caroline's Deposition. Exh 19/Memo Exh 20

12. You took the deposition of Caroline McGuire on March 20, 2013 correct?
    a. Memo re Caroline Deposition
    b. Pop 936

13. What was your impression of Caroline McGuire at the time?
    a. Memo re Caroline Deposition
    b. Pop 936
    c. Credible

14. Carolyn asked Dave to cut down the branches correct?
    a. Dulberg 466. P. 26; Dulberg p. 463 p. 28 hire someone to cut down the tree

Gagnon Deposition Exh 22/ memo Exh 23

Paul's Questions:

1) When did you first express doubts to Dulberg about whether McGuires were liable for Dulberg's injuries? What were those doubts?

2) When did you first inform Dulberg that you were unwilling to take the McGuire case to trial and that he should seek a settlement?

3) When did you first express doubts about whether Gagnon could be proven to be liable for Dulberg's injuries? What were those doubts?

4) When did you first inform Dulberg that you were unwilling to take the Gagnon case to trial?

5) If you felt that McGuires were not liable for Dulberg's injuries and you felt it would be difficult to prove Gagnon liable, why didn't you suggest Dulberg seek alternative counsel before accepting the $5,000 settlement (which wouldn't pay for 10% of Dulberg's medical bills) with the McGuires?

6) What new information did you receive between November of 2013 and April 14, 2014 that convinced you that you would be unwilling to take the Gagnon case to trial. If none, than why

didn't you inform Dulberg you were unwilling to take the Gagnon case to trial before or while urging him to settle for $5,000 with the McGuires?

7) Did you send interrogatory questions to Gagnon?
8) Did you send a request to produce to Gagnon?

8) Did you ever receive Gagnon's answers to interrogatory questions submitted by you? If yes, why were they not included in Dulberg's case file that you gave to him when you withdrew from counsel? If yes, why were they not included in the documents produced in this lawsuit? If yes, then why do this date does nobody seem to have a copy of them?

9) In the documents turned over to Dulberg when you withdrew from counsel, there is a request to produce for Gagnon prepared by you but there is no evidence that Gagnon ever turned over any of the documents requested. One of the documents you requested of Gagnon was a certified copy of his insurance policy. Did you ever receive any of the documents which you requested Gagnon to produce? Did you ever receive a certified copy of Gagnon's insurance policy? If yes, why were they not included in the documents you gave to Dulberg when you withdrew from counsel?

10) In an email from you to Dulberg dated Febuary 26, 2015 about the case file you handed over to Dulberg you wrote, "I don't think I have any insurance policies in the file." Since you requested both the McGuires and Gagnon to produce certified copies of their insurance policies, why didn't you have a certified copy of either insurance policy in Dulberg's case file?

11) Why did you repeatedly inform Dulberg that Gagnon's insurance limit was $100,000?

12) How did you obtain information that the Gagnon policy limit was $100,000?

13) Did you make an offer to settle the McGuire case for $7,500 to Ronald Barch on October 22, 2013? If yes, did Dulberg authorize you to make that offer?

14) Do you have any documented evidence that Dulberg authorized you to make that offer? Do you have any evidence Dulberg authorized you to seek a settlement with the McGuires on or before October 22, 2013?

15) When Ron Barch made an offer of $5,000 to settle the McGuire case on November 18, 2013, Dulberg's response was that he was unhappy with the amount offered. Do you believe that Dulberg was aware that the offer of $5,000 was actually a counter-offer to your proposal of $7,500 made on October 22, 2013? Do you have any evidence that Dulberg was aware that the McGuire offer of $5,000 was actually a counter-offer to the offer you initiated on October 22, 2013?

16) Dulberg's email reply to the $5,000 offer of November 18, 2013, dated November 19, 2013, states:

"When you advised me to seek a settlement with the McGuire's insurance, I agreed to look at it only because they did not have their hands directly on the trigger of the chainsaw and that you would get at the least the medical bills paid for out of it. I thought that was made clear in your office."

Did you advise Dulberg to seek a settlement with the McGuires as he stated? Was it first discussed during meeting in your office as he stated? During which office visit was that discussed? Was it at the November 4th meeting or at an office visit that happened earlier?

17) If looking into a settlement was first discussed with Dulberg at the meeting of November 4, 2013, how could you make the $7,500 offer on October 22, 2013 and claim that Dulberg agreed to it?

18) There was a second meeting between you and Dulberg in your office on November 20, 2013. What was the purpose of the meeting?

19) Did you hand Dulberg documents of case laws at the meeting of November 20, 2013? What case laws were in those documents? Did you discuss cases at the meeting? Which cases were cited? In what way are those cases applicable to the situation with the McGuires?

20) Did you send a request to produce to the McGuires? If yes, why was it not included in the documents you handed over in relation to this lawsuit so far?

21) In a request to produce which you gave to the McGuires, you asked for a certified copy of their insurance policy. They answered that they will give it to you when they receive it. Did you ever receive it? A certified copy of the McGuires insurance policy was not included in the case documents that you turned over to Dulberg when you withdrew from counsel. It was also not included in the documents you turned over in this present lawsuit. Why not?

22) If Dr Levin diagnosed Dulberg with dystonia in August of 2013 and Dr Kajawa diagnosed Dulberg with task specific focal dystonia definitely caused by trauma to his right arm in September of 2013, why did you feel that injury due to Dulberg's chainsaw accident was difficult to prove?

23) Did you read Gagnon's and Dulberg's depositions in order to compare the detailed differences in their version of the days events and the accident?

24) Did you note that Gagnon's description of the accident given to you by phone was very different from how it is described in his deposition? In his description over the telephone he never mentioned anything about Dulberg moving his arm. Later in the deposition he claimed Dulberg moved his right arm into the chainsaw blade. How do you account for this difference?

25) Did you notice that the decription of the chainsaw accident given by Dulberg was completely different from the description of the accident given by Gagnon? For example, Dulberg describes the branch being cut to be about 15 feet long while Gagnon describes it as about 5 feet long. Dulberg describes holding the base of the branch with one hand while Gagnon describes Dulberg holding a 5 foot branch vertically with his left hand above the place where Gagnon was cutting and his right hand holding the same branch below the place where Gagnon was cutting. How do you account for such a large descrepency?

26) Can you please describe how it is physically possible, using Gagnon's description of the accident given in the deposition, to explain how Dulberg was cut on the lower portion of his right forearm perpendicular to the forarm? (Gagnon described Dulberg holding a branch with his left hand above where Gagnon was cutting and with his right hand below where Gagnon

was cutting.)

27) Did you note that your client claimed he was invited by Gagnon to the McGuires to see if he wanted the firewood, not to work?

28) Did you note that your client claimed he was sitting with Carolyn for at least an hour watching Gagnon working with William McGuire, and after William McGuire refused to work any longer it was Carolyn McGuire that first asked Dulberg if he could help Gagnon?

29) Did you note that the McGuires purchased the chainsaw, that they claimed the chainsaw was new, and that they were in possession of the chainsaw and provided it for Gagnon to use contrary to the clear warnings on the cover and opening pages of the chainsaw owners manual?

30) Did you note that the McGuires were in possession of the owners manual and that the manual explicitly has clear warnings written on the cover, on the opening pages and throughout the manual to not do what they admit to allowing to be done with it?

31) If you did not wish to take the McGuire case to trial, why wouldn't you simply advise your client to seek alternative counsel rather than to settle with the McGuires for an amount that wouldn't pay for 10% of his medical bills or anything towards future lost wages?

32) Considering that $5,000 is such a small amount of money relative to Dulberg's medical bills and practically nothing compared to future lost wages, why would you urge your client sign a release barring any future legal action against the McGuires connected to the chainsaw accident in exchange for such an insignificant sum?

33) Why were you so sure the presiding judge would allow the McGuires to get out of the case on a motion considering the same Judge allowed the complaint to proceed to discovery? Why didn't you believe the judge would allow the case against the McGuires to proceed to trial?

34) Considering that $5,000 wouldn't change much for Dulberg in the predicament he was in, wouldn't he have been better off in taking his chances by proceeding with new counsel?

MAIN TOPICS:

MISSING DOCUMENTS FROM FILE

OCTOBER 22, 2013 OFFER FROM MAST TO BARCH OF $7,500

THE NOVEMBER 4th, 2013 MEETING IN MAST'S OFFICE

NOVEMBER 18, 2013 COUNTER-OFFER FROM BARCH TO MAST OF $5,000

THE NOVEMBER 20th, 2013 MEETING IN MAST'S OFFICE

COMMUNICATION WITHIN POPOVICH LAW FIRM ABOUT DULBERG CASE

DOUBTS ABOUT MCGUIRE LIABILITY AND REASONS FOR LETTING MCGUIRES OUT OF CASE

ADVICE TO ACCEPT $5,000

DOUBTS THAT GAGNON CAN BE FOUND NEGLIGENT IN COURT

Paul Evidence List:

1) There is no evidence of any communication about the 7,500 offer leading up to or at any time following Oct 22, 2013.

2) The 7,500 offer was never discussed at the November 4, 2013 meeting that Mast requested to discuss the McGuire case. A witness at the meeting can confirm this.

3) It is not possible to explain why Mast called the November 4th meeting to discuss the McGuire case with Dulberg if they already made an offer 4 weeks earlier and were waiting for Barch to reply at that time.

Barch made the 5,000 offer on November 18, 2013

4) It is clear that Dulberg disagreed with the 5,000 offer from first hearing about it on Nov 18 until finally agreeing on December 24th. The 7,500 offer was not mentioned once during these Mast-Dulberg exchanges.

5) Dulberg quickly called for a meeting with Mast. The 7,500 offer was not discussed at the November 20th meeting. A witness at the meeting can confirm this.

6) It is not possible to explain why Mast called the November 20th meeting or what was discussed if Dulberg already agreed to 7,500.

CONTRACT FOR LEGAL SERVICES

I agree to employ the LAW OFFICES OF THOMAS J. POPOVICH, P.C. (hereinafter "my attorney") to represent me in the prosecution or settlement of my claim against persons or entities responsible for causing me to suffer injuries and damages on the _____ day of _____, 20__.

My attorney agrees to make no charge for legal services unless a recovery is made in my claim. The approval of any settlement amount cannot be made without my knowledge and consent.

I agree to pay my attorney in consideration for his legal services a sum equal to one-third (33 1/3%) of my recovery from my claim by suit or settlement; this will increase to 40% in the event my claim results in more than one (1) trial and/or an appeal of a trial. I understand my attorney may need to incur reasonable expenses in properly handling my claim including, but not limited to, expenses such as accident reports, filing fees, court reporters fees, video fees, records fees, and physician fees. I understand those expenses will be taken out of my settlement, in addition to my attorney's legal fee.

X _____
Client

_____
Client

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH

By: _____

Date: _____

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
815/344-3797

COPY
FILED
MAY 15 2012
KATHERINE M. KEEFE
McHENRY CTY. CIR. CLK.

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

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

PAUL DULBERG,

Plaintiff,

vs. No.: 12LA178

DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually,

Defendants.

COMPLAINT

NOW COMES the Plaintiff, PAUL DULBERG, by his attorneys, LAW OFFICES OF THOMAS J. POPOVICH, P.C., and complaining against the Defendants, DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE, and CAROLINE McGUIRE and BILL McGUIRE, individually, and states as follows:

Count I

Paul Dulberg vs. David Gagnon, individually, and as Agent of Caroline and Bill McGuire

1. On June 28, 2011, the Plaintiff, PAUL DULBERG, lived in the City of McHenry, County of McHenry, Illinois.

2. On June 28, 2011, Defendants CAROLINE McGUIRE and BILL McGUIRE lived, controlled, managed and maintained a single family home located at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM 204 ON
7/18 20 12, AT 9 AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

NOTICE
BY LOCAL RULE 3.10
THIS CASE IS HEREBY SET FOR SCHEDULING
CONFERENCE IN COURTROOM ON
20 , AT AM PM
FAILURE TO APPEAR MAY RESULT IN THE CASE
BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

3. On June 28, 2011, the Defendant, DAVID GAGNON, was living and/or staying at his parent's home at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

4. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE contracted, hired the Defendant, DAVID GAGNON, to cut down, trim and/or maintain the trees and brush at their premises at 1016 W. Elder Avenue, in the City of McHenry, County of McHenry, Illinois.

5. On June 28, 2011, and at the request and with the authority and permission of the Defendants CAROLINE McGUIRE and BILL McGUIRE, and for their benefit, the Defendant, DAVID GAGNON, was working under their supervision and control while engaged in cutting, trimming and maintaining trees and brush at the premises at 1016 W. Elder Avenue, in the City of McHenry. County of McHenry, Illinois.

6. On June 28, 2011, as part of his work at the subject property, the Defendant, DAVID GAGNON, was authorized, instructed, advised and permitted to use a chainsaw to assist him in his work for Defendants, CAROLINE McGUIRE and BILL McGUIRE, which was owned by the McGuires.

7. On June 28, 2011, the Defendant, DAVID GAGNON, was under the supervision and control of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was working as their apparent and actual agent, and was then acting and working in the scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE.

8. On June 28, 2011, and while the Defendant, DAVID GAGNON, was working in the course and scope of his agency for Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was under their supervision and control, Defendant, DAVID GAGNON was in use of a chainsaw while trimming a tree and branch.

9. On June 28, 2011, and while Defendant, DAVID GAGNON, was in use of a chainsaw while trimming a tree and branch, Defendant, DAVID GAGNON, asked for and/or requested the assistance of the Plaintiff, PAUL DULBERG, to hold the tree branch while Defendant, DAVID GAGNON, trimmed the branch with the chainsaw.

10. On June 28, 2011, and while Defendant, DAVID GAGNON, was in sole control, use and operation of the subject chainsaw, the chainsaw was caused to strike and injure the Plaintiff, PAUL DULBERG.

11. At all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew of Defendant, DAVID GAGNON's use of the chainsaw in the presence of the Plaintiff, PAUL DULBERG, and knew that such created a danger to the Plaintiff, PAUL DULBERG's safety.

12. That at all relevant times, the Defendants, DAVID GAGNON, as agent of CAROLINE McGUIRE and BILL McGUIRE, owed a duty to use care and caution in his operation of a known dangerous instrumentality.

13. On June 28, 2011, the Defendant, DAVID GAGNON, was negligent in one or more of the following ways:

a. Failed to maintain control over the operating of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant, DAVID GAGNON's inability to control the chainsaw;

d. Failed to keep a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

14. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

15. That at the above time and date, the Defendant's negligence can be inferred from the circumstances of the occurrence as the instrument of the injury was under the control of the Defendant and therefore, negligence can be presumed under the doctrine of *Res Ipsa Loquitur*.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, DAVID GAGNON, and CAROLINE McGUIRE and BILL McGUIRE in an amount in excess of $50,000.00, plus costs of this action.

Count II

Paul Dulberg vs. Caroline McGuire and Bill McGuire

1 - 15. That the Plaintiff, PAUL DULBERG, restates and realleges paragraphs 1 through 14, in Count I, above, as paragraphs 1 through 15 of Count II, as if fully alleged herein.

16. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, owned, controlled, maintained and supervised the premises whereat the accident to the Plaintiff, PAUL DULBERG, occurred.

17. That at all relevant times, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were in control of and had the right to advise, instruct and demand that the Defendant, DAVID GAGNON, act or work in a safe and reasonable manner.

18. That at all relevant times, the Defendant, DAVID GAGNON, was acting as the agent, actual and apparent, of Defendants, CAROLINE McGUIRE and BILL McGUIRE, and was acting at their request and in their best interests and to their benefit as in a joint enterprise.

19. That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, knew DAVID GAGNON was operating a chainsaw with the assistance of the Plaintiff, PAUL DULBERG, and had the right to discharge or terminate the Defendant, DAVID GAGNON's work for any reason.

20 That at all relevant times, Defendants, CAROLINE McGUIRE and BILL McGUIRE, owed a duty to supervise and control Defendant, DAVID GAGNON's activities on the property so as not to create a unreasonable hazard to others, including the Plaintiff, PUAL DULBERG.

21. On June 28, 2011, the Defendants, CAROLINE McGUIRE and BILL McGUIRE, were negligent in one or more of the following ways:

a. Failed to control operation of the chainsaw;

b. Failed to take precaution not to allow the chainsaw to move toward the Plaintiff, PAUL DULBERG, so as to cause injury;

c. Failed to warn the Plaintiff, PAUL DULBERG, of the dangers existing from the Defendant's inability to control the chainsaw;

d. Failed to keep the chainsaw a proper distance from the Plaintiff, PAUL DULBERG, while operating the chainsaw;

e. Otherwise was negligent in operation and control of the chainsaw.

22. That as a proximate result of the Defendant's negligence, the Plaintiff, PAUL DULBERG, was injured externally; he has experienced and will in the future experience pain and suffering; he has been permanently scarred and/or disabled; and has become obligated for large sums of money for medical bills and will in the future become obligated for additional sums of money for medical care, and has lost time from work and/or from earning wages due to such injury.

WHEREFORE, Plaintiff, PAUL DULBERG, demands judgment against Defendants, CAROLINE McGUIRE and BILL McGUIRE, in an amount in excess of $50,000.00, plus costs of this action.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

One of the Attorneys for Plaintiff

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
Lake, Illinois 60050
(815) 344-3797
ARDC No. 06203684

STATE OF ILLINOIS)
)SS
COUNTY OF McHENRY)

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

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	No.:

AFFIDAVIT

I, HANS A. MAST, being first duly sworn on oath, depose and state as follows:

1. That I am one of the attorneys responsible for the prosecution of the above-entitled case.

2. That on behalf Plaintiff, PAUL DULBERG, I am hereby requesting money damages in an amount not to exceed $50,000.00, together with the costs of this action, against each of the above-named Defendants.

FURTHER, Affiant sayeth naught.

LAW OFFICES OF THOMAS J. POPOVICH, P.C.

Hans A. Mast
LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, Illinois 60050
(815) 344-3797
ARDC No. 06203684

MEMORANDUM

TO: Tom, Marla, Diana and Alarie

FROM: Hans

DATE: December 5, 2011

SUBJECT: **PAUL DULBERG - NEW CLIENT**

HAM
B/C the accident occurred on their premises, their H.O. med-pay will cover the bills.

On December 1, 2011, I met Paul Dulberg and his mother, concerning a recent injury that Paul suffered at a friend's house due to a chainsaw accident on June 28, 2011. Paul was referred to our office by a former client, Hubert McArtor. Paul had previously been with Francisco Botto in Woodstock but they rejected the case. He did sign a contract with Botto but we have correspondence in the file that they rejected him and sent him away. They did not refer him to us. Apparently, they rejected the case because they did not think that they would be able to prove that the defendant was more than 50% negligent causing the accident. I disagree.

Paul's contact information is as follows:

Paul Dulberg
4606 Hayden Court
McHenry, IL 60051
847/497-4250
SSN 323-76-4001
DOB 03-19-70
DOA 06/28/11

Paul describes that he was at a friend's house, Caroline and Bill McGuire who live at 1016 W. Elder Avenue, McHenry, IL 60051, phone 815/344-4274. The McGuire's son, Dave was at the home and Dave was cutting up some tree limbs in the yard. Caroline had called Paul over to the house earlier to see if he wanted the wood for firewood. Dave asked Paul to hold some tree limbs while he cut them up. He had held two tree branches previously and then about an hour after he arrived he was holding another branch and Dave suddenly swung around with the chainsaw rising it in the air and cutting his Paul's forearm severely while holding on to a branch. Paul said that the chainsaw went about 40% through his forearm. Dave took him immediately to NIMC where they stitched him up. It was a very deep and open wound. Unfortunately, he did not take any photos of the wound. Instead, he followed up with his family physician, Dr. Frank Sek on Route 120 in McHenry who removed the stitches about a week later. Dr. Sek thought there was going to be possible nerve damage due to his arm being very painful. About two weeks later he went to a doctor at the Associates in Neurology in Libertyville and they took and EMG test which found that there were some branch nerves that had been severed which may be the cause of his ongoing pain. They thought that the pain was probably more ligamentous and they referred him to Dr. Paul Papierski, phone 847/247-0547. That was in August. He has not returned to see Dr. Papierski because apparently they needed an MRI and he did not have money to pay for an MRI. I urged him to return

to see Dr. Papierski and to have the MRI done even if they have to hold a lien on our case. His arm is very painful when he lifts anything and he drops things continuously. He said that he will follow up with Dr. Papierski and advise me further what needs to be done as far as treatment.

At the time of the accident he was not employed but he had been just recently hired when the accident occurred by AMS Screw Products in Spring Grove. He was going to earn $12 an hour for 40 hours per week. He had talked to Karen over at AMS Screw and she agreed to hire him, but unfortunately, he was injured before he could start work. Their phone number is 732/545-8888x231.

The central issue in my view in this case is whether there is insurance coverage. Since the son was not living with the McGuire's at the time of the accident, it may be that David Gagnon is not going to be insured for the accident. However, Paul and his mother advised me that Dave also had a home and lived at 39010 90th Place in Genoa City, Wisconsin. Therefore, hopefully he has homeowner's insurance that will apply to this claim as well as med-pay coverage to help pay for the MRI that needs to be done.

The McGuire's were insured by:

Auto Owners Insurance
Tom Malatia, Adjuster
6000 Tallgate Road, Suite D
Elgin, IL 60123
847/587-3077
847/531-5420
847/531-8063x3808 gen. #
Claim No. 13-2779-11

By copy of this memo, I ask **Alarie** to set up a new file.

By copy of this memo, I ask **Marla** to order the medical records and bills from NIMC, Dr. Frank Sek and Associates in Neurology in Libertyville. Please also diary the 1 and 2 year SOL deadlines in this case.

Thanks,

Hans

S:\Main\DULBERG, PAUL\Memos\Memo re new client 12-5-11.wpd

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

FAXED

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for $7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

** Transmit Conf.Report **

P.1 Oct 22 2013 12:24pm
LAW OFFICE T POPOVICH Fax 1-815-344-5280

Fax/Phone Number	Mode	Start	Time	Page	Result	Note
18152267701	Normal	22:12:23pm	0'25"	1	* O K	

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

October 22, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

I recently discussed this claim with my client. We are prepared to let your clients out of the case for $7,500 at this point. Please advise how you wish to proceed.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

XFINITY Connect

hansmast@comcast.ne

+ Font Size -

Re: Medical depositions

From : Hans Mast <hansmast@comcast.net>

Wed, Oct 30, 2013 02:34 PM

Subject : Re: Medical depositions

To : Paul Dulberg <pdulberg@comcast.net>

Cc : Hans Mast <hansmast@comcast.net>

Paul, here are my thoughts regarding your case. There are two issues. The first liability, or whether Mr. Gagnon is liable for your injury. If he is not proven liable, then it does not matter how badly you were hurt since he will not be found responsible for your damages. The second issue is your damages, or to what extent you were injured due to Mr. Gagnon’s acts.
Both of these issues are strongly contested in your case.
As to liability, there were no witnesses to the accident. So, whether Mr. Gagnon will be held responsible for your damages is uncertain and a gamble. That is because it is your word against his word. Our argument is that you were simply holding a limb when he caused the chain saw to strike you. His argument is that you moved your arm in the path of the chain saw unexpectedly. If the jury determines that we did not prove your "version" of the accident, then they can find against you and in favor of Mr. Gagnon at trial.
As to damages, the issue is complicated. That is because your treating physicians do not all agree on exactly what injury you suffered or whether your had a fully recovery or not.
Dr. Talerico at MidAmerica Hand and Shoulder, saw you twice. The first time was in December, six months after your injury. He was not supportive of your claim in most respects. He didn’t really feel there was anything wrong with you - as to the forearm. He said that you complained mostly of pain radiating down the forearm from the laceration site with numbness and tingling. On exam he noted no tenderness and it was mostly a normal presentation. Strength was good. He did not see any nerve problem. He prescribed physical therapy due to a muscular sort of symptomology - not nerve related. Apparently you did only 2 sessions of therapy and returned January, 2012. No new complaints at the time. The EMG was normal. He did not believe you were disabled. He continued you on therapy. He saw no evidence of nerve problems. The only symptoms were subjective - not represented by any abnormal exam finding.
Dr. Sagerman has also been deposed. I will summarize his testimony for your soon. His was more favorable, but still limited in what he related to the chain saw accident. Apparently he does not believe you presently have any symptoms relatable to the chain saw injury.
Think about these issues. I will provide you Dr. Sagerman’s summary soon.
Hans

----- Original Message -----From: Paul Dulberg <pdulberg@comcast.net>To: Hans Mast <hansmast@comcast.net>Sent: Fri, 25 Oct 2013 13:18:24 -0000 (UTC)Subject: Medical depositions

Morning Hans,Wanted to touch base this morning because the call from you about something not being medically linked has been on my mind.I'm not sure what was said during that deposition with the drs that prompted the call but I have been thinking about what it could be. Most likely it was the right elbow procedure. During my deposition I remember being asked if the two were linked and I answered yes. Let me explain my answer to you. If the chainsaw had not gone through my arm then the procedure on my elbow wouldn't have happened. That procedure was exploratory to find what was bothering the arm from the chainsaw. Upon opening up the arm they did find some compressions which from my understanding was nothing unusual for a male of my age and very well may or may not have happened during my retreat from the chainsaw when I ended up half way across the yard on the ground. Incidental finding or not it still would not have been found if I hadn't had the chainsaw incident. So as I see it they are linked good or bad and cannot be separated. The exploratory procedure was to find and possibly fix issues relating to the chainsaw incident. They also removed a ton of scar tissue in the forearm on the same day during the same exploratory procedure that was a direct result of the chainsaw.

Hope this helps explain things better.Let me know,Thanks,Paul

Paul Dulberg847-497-4250Sent from my iPad

XFINITY Connect

hansmast@comcast.ne

+ Font Size -

Re: Dave's Best and oldest friend John

From : Paul Dulberg <pdulberg@comcast.net> Tue, Nov 19, 2013 02:29 AM

Subject : Re: Dave's Best and oldest friend John

To : Hans Mast <hansmast@comcast.net>

I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.

Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 8:07 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
>
> Sent from my iPhone
>
>> On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>
>> Only 5, That's not much at all.
>> Is this a take it or leave it or do we have any other options?
>>
>> If you want a negligence case for the homeowners ask what happened immediately after the accident.
>>
>> Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.
>>
>> They all left me out in the yard screaming for help while they were busy making sure they were covered.
>>
>> She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.
>>
>> How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.
>>
>> I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.
>>
>> I'm not happy with the offer.
>>
>> As far as John Choyinski, he knows he has to call you and said he will tomorrow.
>>
>> Paul
>>
>> Paul Dulberg
>> 847-497-4250
>> Sent from my iPad
>>
>>> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>>>
>>> Im waiting to hear from John. I tried calling him last week, but no one answered.
>>>
>>> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at

some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>>>
>>> Let me know what you think..
>>>
>>> Hans
>>> ----- Original Message -----
>>> From: Paul Dulberg <pdulberg@comcast.net>
>>> To: Hans Mast <hansmast@comcast.net>
>>> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
>>> Subject: Dave's Best and oldest friend John
>>> Hans,
>>> Just spoke with John Choyinski again about talking with you.
>>> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
>>> I believe he will try and call sometime tomorrow.
>>> Paul
>>> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
>>> Sorry for the rant but Dave was a complete ass all the way and deserves this.
>>> Paul Dulberg
>>> 847-497-4250
>>> Sent from my iPad

CICERO, FRANCE, BARCH & ALEXANDER, P.C.
A Professional Corporation
Attorneys at Law
6323 EAST RIVERSIDE BOULEVARD
ROCKFORD, ILLINOIS 61114

PAUL R. CICERO
JOHN W. FRANCE
RONALD A. BARCH
CHARLES P. ALEXANDER

CHANTEL R. BIELSKIS
ANDREW T. SMITH

TEL: (815) 226-7700
FAX: (815) 226-7701

November 18, 2013

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich, PC
3416 West Elm Street
McHenry, IL 60050

Case: *Paul Dulberg v. David Gagnon, Caroline McGuire and Bill McGuire*
(McHenry County Case No. 12 LA 178)

Issued For Settlement Purposes Only

Dear Mr. Mast:

I am writing to confirm our telephone conversation earlier this morning, wherein I advised you that I was authorized to propose settlement of Mr. Dulberg's claim against Carolyn and Bill McGuire for a lump-sum total of $5,000.00. The settlement would of course be contingent upon customary settlement documents, including a release, a good faith settlement finding and dismissal.

Pursuant to your request, I searched my file materials for lien notices. The only notice of lien contained in my file at this time is your Attorney's Lien (enclosed). I have asked my contact at Auto-Owners Insurance Company to confirm no lien notices have arrived on his end since Mr. Dulberg's case was assigned to me for the defense of Mr. and Mrs. McGuire. I do not anticipating any lien notices, but just wanted to be safe.

I understand that you intend to run my settlement proposal by Mr. Dulberg. I look forward to hearing from you once you have had a chance to confer with him.

Very truly yours,

RONALD A. BARCH

RB:mj\37ltr.HAM
cc Tom Malatia (Claim No. 13-2779-11)
Encl.

MEMORANDUM

TO: File

FROM: Hans

DATE: November 20, 2013

SUBJECT: **PAUL DULBERG**

On November 20, 2013, I met with Paul and his friend to discuss the McGuire's $5,000 settlement offer and other issues with regard to this case. I also told them there is a dispute as to McGuire's liability, as they maintain that they were not directing Dave's work. Paul maintains that the McGuire's controlled everything that Dave was doing. I told him that that's not what the evidence seems to show. I told them the McGuire's could possibly get out of the case on motion, and the alternative is to accept the $5,000 offer. Paul wants to read the deps of the McGuire's and also wants us to order his and Dave's dep to review. I agreed to do so.

By copy of this memo, I ask **Sheila** to order copies of Paul and Dave's deps. I think defense counsel ordered them, so all we need to do is get copies. Please let me know if the copies have not been already ordered so we don't have to order the originals.

Thanks,

Hans

From: Paul Dulberg <pdulberg@comcast.net>
Subject: **Fwd: Dave's Best and oldest friend John**
Date: December 28, 2016 10:33:35 AM CST
To: paul_dulberg@comcast.net

From: Paul Dulberg <pdulberg@comcast.net>
Date: November 20, 2013 at 7:26:53 AM CST
To: Hans Mast <hansmast@comcast.net>
Subject: Re: Dave's Best and oldest friend John

Morning Hans,
Ok we can meet. I will call Sheila today and set up a time.
Please send me a link to the current Illinois statute citing that the property owner is not liable for work done on their property resulting in injury to a neighbor.
I need to read it myself and any links to recent case law in this area would be helpful as well.
Thanks,
Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 20, 2013, at 6:59 AM, Hans Mast <hansmast@comcast.net> wrote:
>
> Paul, lets meet again to discuss. The legality of it all is that a property owner does not have legal liability for a worker (whether friend, son or otherwise) who does the work on his time, using his own independent skills. Here, I deposed the McGuires, and they had nothing to do with how Dave did the work other than to request the work to be done. They had no control on how Dave wielded the chain saw and cut you. Its that simple. We don't have to accept the $5,000, but if we do not, the McGuires will get out for FREE on a motion. So that's the situation.
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Tue, 19 Nov 2013 02:29:56 -0000 (UTC)
> Subject: Re: Dave's Best and oldest friend John
> I still don't get how they don't feel responsible for work done on their property by their own son that ended up cutting through 40% of my arm.
> Perhaps their negligence is the fact that they didn't supervise the work close enough but they did oversee much of the days activity with David. Just because Dave was doing the work doesn't mean they were not trying to tell their kid what to do. They told him plenty of times throughout the day what to do. How is that not supervising?
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>
> > On Nov 18, 2013, at 9:07 PM, Hans Mast <hansmast@comcast.net> wrote:
> >
> > Paul whether you like it or not they don't have a legal liability for your injury because they were not directing the work. So if we do not accept their 5000 they will simply file a motion and get out of the case for free. That's the only other option is letting them file motion getting out of the case
> >
> > Sent from my iPhone
> >
> > > On Nov 18, 2013, at 7:40 PM, Paul Dulberg <pdulberg@comcast.net> wrote:
> > >
> > > Only 5, That's not much at all.
> > > Is this a take it or leave it or do we have any other options?
> > >
> > > If you want a negligence case for the homeowners ask what happened immediately after the accident.
> > >
> > > Neither of them offered me any medical assistance nor did either of them call 911 and all Carol could think of besides calling David an idiot was calling her homeowners insurance.



They all left me out in the yard screaming for help while they were busy making sure they were covered.

She even went as far as to finally call the Emergency Room after I was already there just to tell me she was covered.

How selfish are people when they worry about if their insured over helping the person who was hurt and bleeding badly in their yard.

I'm glad she got her answer and had to share it with me only to find out her coverage won't even pay the medical bills.

I'm not happy with the offer.

As far as John Choyinski, he knows he has to call you and said he will tomorrow.

Paul

Paul Dulberg
847-497-4250
Sent from my iPad

> On Nov 18, 2013, at 1:28 PM, Hans Mast <hansmast@comcast.net> wrote:
>
> Im waiting to hear from John. I tried calling him last week, but no one answered.
>
> In addition, the McGuire's atty has offered us (you) $5,000 in full settlement of the claim against the McGuires only. As we discussed, they have no liability in the case for what Dave did as property owners. So they will likely get out of the case on a motion at some point, so my suggestion is to take the $5,000 now. You probably won't see any of it due to liens etc. but it will offset the costs deducted from any eventual recovery....
>
> Let me know what you think..
>
> Hans
> ----- Original Message -----
> From: Paul Dulberg <pdulberg@comcast.net>
> To: Hans Mast <hansmast@comcast.net>
> Sent: Fri, 15 Nov 2013 22:41:26 -0000 (UTC)
> Subject: Dave's Best and oldest friend John
> Hans,
> Just spoke with John Choyinski again about talking with you.
> I am leaving your number with him as he has agreed to talk with you about David Gagnon.
> I believe he will try and call sometime tomorrow.
> Paul
> Oh and I know that nothing that happened right after the incident makes any difference as to the validity of the injuries but David's conduct immediately after the incident does show his lack of moral values for other humans and what he was willing and was not willing to do to help me get medical help. For his actions towards me or any other human being is enough to sue the shit out him alone. It is the things that happened afterwards that upset me the most.
> Sorry for the rant but Dave was a complete ass all the way and deserves this.
> Paul Dulberg
> 847-497-4250
> Sent from my iPad

MEMORANDUM

TO: File

FROM: Hans

DATE: December 20, 2013

SUBJECT: **PAUL DULBERG**

On December 18, 2013, I called Paul today after an email and we had a long discussion about the McGuire's liability and he seemed to concede and understand that probably based on the testimony there is nothing we can prove against the McGurie's and he is willing to take their $5,000 settlement offer.

The Law Offices of Thomas J. Popovich P.C.

3416 W. Elm Street
McHenry, Illinois 60050
Telephone: 815.344.3797
Facsimile: 815.344.5280
www.popovichlaw.com

FAXED 12/27

Thomas J. Popovich
Hans A. Mast
John A. Kornak

Mark J. Vogg
James P. Tutaj
Robert J. Lumber
Theresa M. Freeman

December 26, 2013

VIA FACSIMILE: 815/226-7701

Ronald A. Barch
Cicero, France, Barch & Alexander, PC
6323 E. Riverside Blvd.
Rockford, IL 61114

RE: ***Paul Dulberg vs. David Gagnon, Caroline McGuire and Bill McGuire***
McHenry County Case: 12 LA 178

Dear Mr. Barch:

Please be advised that we will accept your $5,000 settlement offer on behalf of you clients, Caroline and Bill McGuire. Please forward your settlement agreement to my attention. Also, please present a motion for good faith finding with regard to the settlement.

As I understand it, you have no liens on the file other than our attorney's lien.

Thank you for your cooperation.

Very truly yours,

HANS A. MAST

smq

Waukegan Office
210 North Martin Luther
King Jr. Avenue
Waukegan, IL 60085

– Intentionally Blank –
Placeholder for corrupted PDF file – 27 pages.
Filename:
Dulberg Mast Dep Exh 12 Legal Research .pdf

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 22ND JUDICIAL CIRCUIT
COUNTY OF McHENRY

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendants.	)	Case No. 12 LA 178

ANSWER TO PLAINTIFF'S INTERROGATORIES TO DEFENDANTS BILL McGUIRE AND CAROLYN McGUIRE

TO: Paul Dulberg
c/o Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

Defendants, BILL McGUIRE AND CAROLYN McGUIRE (improperly named Caroline), by and through their attorneys, Cicero, France, Barch & Alexander, PC, and for their Answer to Plaintiff's Interrogatories, state as follows:

1. State the full name of the defendant(s) answering, as well as your current residence address, date of birth, marital status, and social security number, and, if different, give the full name, as well as the current residence address, date of birth, marital status, and social security number of the individual(s) signing these Answers.

ANSWER:

William "Bill" McGuire	Carolyn McGuire
1016 W. Elder Avenue	1016 W. Elder Avenue
McHenry, IL 60051	McHenry, IL 60051
Married: Carolyn	Married: Bill
DOB: July 29, 1952	November 26, 1946

Defendants object to providing Social Security Numbers. Such information is highly sensitive and private and is furthermore irrelevant to any issues in the pending lawsuit.

2. State the full name and current residence address of each person who witnessed or claims to have witnessed the accident to the Plaintiff on the premises as described in the complaint.

ANSWER: David Gagnon
39010 90th Place
Genoa City, WI 53128

Paul Dulberg
4606 Hayden
McHenry, IL 60051

3. State the full name and current residence address of each person who witnessed or claims to have witnessed the work and/or conditions existing as described in the complaint at the location of the accident on the date of the accident described.

ANSWER: See answer to Interrogatory No. 2.

4. State the name and address of the person(s) or entity that owned the property premises whereat the accident occurred as alleged, as of the date in question.

ANSWER: Bill and Carolyn McGuire
1016 W. Elder Avenue
McHenry, IL 60051

5. State the name and address of the person(s) or entity that was involved in the work and/or maintenance of the exterior of the premises as alleged on the date in question.

ANSWER: See response to Interrogatory No. 2.

6. State the name and address of the person(s) or entity that decided or chose to undertake the work and/or maintenance of the exterior of the premises as alleged on the date in question, including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

7. State the name and address of the person(s) or entity that was to supervise or oversee the work and/or maintenance at the exterior of the premises as alleged on the date in question including chain saw use and activity.

ANSWER: See response to Interrogatory No. 2.

8. State the full name and current residence address of each person, who was present and/or claims to have been present at the scene immediately before, at the time of, and/or immediately after said occurrence.

ANSWER:

Before:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
At Time Of Occurrence:	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051
After:	William "Bill" McGuire 1016 W. Elder Avenue McHenry, IL 60051	Carolyn McGuire 1016 W. Elder Avenue McHenry, IL 60051
	David Gagnon 39010 90th Place Genoa City, WI 53128	Paul Dulberg 4606 Hayden McHenry, IL 60051

9. State the name and address of each witness that knows or claims to know the circumstances of the alleged accident, how it occurred or how the Plaintiff became injured – as alleged in the Complaint.

ANSWER: On information and belief, David Gagnon and Paul Dulberg were present at the time of the alleged occurrence and therefore know the circumstances surrounding the occurrence. Answering further, Defendants Bill McGuire and Carolyn McGuire were not present at the time of the occurrence but knew that David Gagnon and Paul Dulberg were present on the date of the occurrence. From conversations with David Gagnon, the answering Defendants believe that Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Investigation continues.

10. With respect to the chain saw that was being operated on the premises at the time of the alleged injury, state as follows:

a. Who was operating the chain saw at the time of the Plaintiff's alleged injury;

b. Who owned the chain saw at the time of Plaintiff's alleged injury;

c. who requested that the chain saw be used to perform work at the time of Plaintiff's injury.

ANSWER:

a. On information and belief, David Gagnon was operating the chain saw at the time Mr. Dulberg was injured.

b. Bill McGuire was the owner of the chain saw on the date of the occurrence.

c. David Gagnon had Bill McGuire's permission to use the chain saw.

11. With respect to David Gagnon's experience in use of a chain saw prior to the date of the alleged accident, state as follows:

a. How many times had David Gagnon operated the same or similar chain saw prior to the date of alleged accident;

b. What formal training did David Gagnon receive in use or operation of a chain saw prior to the occurrence alleged;

c. Who, if any, (names and addresses) trained David Gagnon in use or operation of a chain saw prior to the occurrence.

ANSWER:

a. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, and to the best of the answering parties' knowledge, David Gagnon has used chain saws in the past but the answering parties do not known how often he has used chain saws in the past.

b. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering parties do not know whether David Gagnon has been formally trained the use or operation of a chain saw. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

c. Objection. This interrogatory is better directed to David Gagnon. Answering subject to objection, the answering party do now know whether or by whom David Gagnon was trained in the use of chain saws. Answering further, the answering parties are aware that Mr. Gagnon has used chain saws many times in the past and he appears/appeared to know what he is doing.

12. What was the scope of work or task David Gagnon was engaged in with use of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent "scope of work" or "engaged" constitute legal conclusions, the answering Defendants object to Interrogatory No. 12. Answering subject to objection, at the time of the alleged occurrence, the answering Defendants were in the process of replacing an old shed on their property. Paul Dulberg helped David Gagnon tear down the old shed. The answering Defendants further believe that Mr. Dulberg took the components of the old shed to his property for eventual reassembly. On the date of the occurrence, Mr. Dulberg was helping David Gagnon take down several trees to make room for a new shed. On information and belief, prior to the occurrence Mr. Gagnon and Mr. Dulberg had been cutting logs and tree branches into smaller sections without incident. While in the process of cutting tree branches Paul Dulberg unexpectedly and without warning moved his right arm directly in the path of the running chain saw. Answering further, the answering Defendants did not engage, hire or pay either individual for their activities on site. Nor did either answering Defendant dictate, control or otherwise supervise the methods and means by which Mr. Gagnon and Mr. Dulberg performed the tree and branch cutting at issue.

13. Who (names and addresses) requested or chose to engage Gagnon in the "task" of use and operation of the chain saw at or about the time of the alleged accident.

ANSWER:

To the extent the words "chose" and "engage" constitute legal conclusions, the answering Defendants object to Interrogatory No. 13. Answering subject to objection, David Gagnon undertook the tree cutting and trimming in question as a favor to his parents. He was not engaged, hired or paid for the activities in question.

14. What instructions or guidance, if any, was given to Gagnon prior to Plaintiff's alleged injury/accident with regard to how he was to perform the chain saw work at the premises.

ANSWER: See response to Interrogatory No. 11.

15 Were you (Defendant) covered under any policy of insurance at the time of the occurrence. If so, were you named or covered under any policy, policy, or policies, of liability insurance effective on the date of said occurrence, and: State the name of each such company or companies, the policy number of numbers, the effective period(s) occurrence, including umbrella or excess insurance coverage, property damage and medical payment coverage.

ANSWER: Yes.
Auto-Owners Insurance Company
Policy No. 48-010-965-01
Eff.: May 9, 2011 thru May 9, 2012
Personal Liability (Each Occurrence): $300,000.00
Medical Payments (Each Person): $1,000.00

16. Do you have any information:

(a) That any plaintiff was, within the 5 years immediately prior to said occurrence, confined in a hospital and/or clinic, treated by a physician and/or other health professional, or x-rayed for any reason other than person injury? If so, state each plaintiff so involved, the name and address of each such hospital and/or clinic, physician, technician and/or other health care professional, the approximate date of such confinement or service and state the reason for such confinement or service;

(b) That any plaintiff has suffered any serious personal injury and/or illness prior to the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(c) That any plaintiff has suffered any serious personal injury and/or illness since the date of said occurrence? If so, state each plaintiff so involved, state when, where and how he or she was injured and/or ill and describe the injuries and/or illness suffered;

(d) That any plaintiff has ever filed any other suit for his or her own personal injuries? If so, state each plaintiff so involved, state the court, and caption in which filed, the year filed, the title and docket number of said case.

ANSWER:

a. On information and belief, the answering parties believe that Paul Dulberg was involved in a motor vehicle accident that resulted in a shoulder injury of some sort. The answering parties do not know of any other details about the auto accident or injuries, if any.
b. See answer to Interrogatory No. 16(a).
c-d. No.

17. Were any photographs, movies and/or videotapes taken of the scene of the occurrence or of the persons involved? If so, state the date or dates on which such photographs, movies and/or videotapes were taken, the subject thereof, who now has custody of them, the name, address and occupation and employer of the person taking them.

ANSWER: None, other than those furnished as part of Plaintiff's discovery response.

18. Have you (or anyone acting on your behalf) had any conversations with any person at any time with regard to the manner in which the occurrence complained of occurred, or have you overheard any statements made by any person at any time with regard to the injuries complained of by plaintiff or the manner in which the occurrence complained of occurred? If the answer to this Interrogatory is in the affirmative, state the following:

(a) The date or dates of such conversations and/or statements;
(b) The place of such conversations and/or statements;
(c) All persons present for the for the conversations and/or statements;
(d) The matters and things stated by the person in the conversations and/or statements;
(e) Whether the conversation was oral, written and/or recorded; and
(f) Who has possession of said statement if written and/or recorded.

ANSWER: (a) thru (f): See summary of oral communication received from David Gagnon set forth in response to Interrogatory No. 9. Answering further, on information and belief, a few weeks after the subject occurrence Paul Dulberg did roofing work and moved heavy pieces of lumber for Mike Thomas, 460 Walbeck Drive, Twin Lakes, WI 53181 (312/961-9655). Investigation continues.

19. Do you know of any statements made by any person relating to the occurrence complained of by the plaintiff? If so, give the name and address of each such witness, the date of said statement, and state whether such statement was written and/or oral.

ANSWER: See answers to Interrogatories No. 9 and 18.

20. State the name and address of each person having knowledge of Plaintiff's activities on the premises PRIOR to the accident in question.

ANSWER: Paul Dulberg and David Gagnon.

21. State the name and address of each person having knowledge of Plaintiff's activities on the premises AFTER the accident in question.

ANSWER: Paul Dulberg, David Gagnon, Bill McGuire and Carolyn McGuire.

22. Had the Plaintiff ever used or operated a chain saw on the premises or for the Defendant's prior to his alleged accident. If so, state the dates and times such occurred.

ANSWER: Yes. In June 2011 Carolyn and Bill McGuire had a contractor take down a large tree on their property. The contractor left the fallen limbs. Shortly thereafter, Paul Dulberg brought his own chain saw down to the property. He cut the limbs into logs. David Gagnon helped him cut and load the logs.

23. Pursuant to Illinois Supreme Court Rule 213(f), provide the name and address of each witness who will testify at trial, and state the subject of each witness' testimony, giving the following information:

(a) The subject matter on which the opinion witness is expected to testify;
(b) The conclusions and/or opinions of the opinion witness and the basis therefore, including reports of said witness, if any;
(c) The qualifications of each opinion witness, including a Curriculum Vitae and/or resume, if any; and
(d) Identify any written reports of the opinion witness regarding this occurrence.

ANSWER:

Illinois Supreme Court Rule 213(f)(1) – Lay Witnesses:

The answering party has not yet determined the identity of the witnesses that might be called upon to offer lay witness testimony and opinions at trial. However, each of the following individuals are possible trial witnesses:

a. Paul Dulberg. Presumably, Mr. Kemp will testify about his age, education and work experience. He may testify concerning all the events and occurrences alleged in his complaint. He may also testify concerning his state of health before the events and occurrences alleged in his complaint, the injuries he attributes to the events and occurrences alleged in his complaint, and his current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

b. David Gagnon. The answering party does not know the specifics of Mr. Gagnon's potential trial testimony. Presumably, however, Mr. Gagnon will testify about his age, education and work experience. He may testify concerning his connection to Bill McGuire and Carolyn McGuire. He may testify concerning the events and occurrences alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health before the events and occurrences alleged in Plaintiff's Complaint, observations he made about the injuries Mr.

Dulberg attributes to the events and occurrences alleged in Plaintiff's Complaint, and observations he made about Mr. Dulberg's current state of health. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

c. Bill McGuire. If called upon to testify, Mr. McGuire will testify about his age, education and work experience. He will testify concerning his connection to David Gagnon and Carolyn McGuire. He may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. He may also testify concerning observations he made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations he made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that he will testify concerning all matters covered by his discovery responses and discovery deposition, if taken. Investigation continues.

d. Carolyn McGuire. If called upon to testify, Mrs. McGuire will testify about her age, education and work experience. She will testify concerning her connection to David Gagnon and Bill McGuire. She may testify concerning the circumstances surrounding the occurrence alleged in Plaintiff's Complaint. She may also testify concerning observations she made about Mr. Dulberg's state of health immediately after and since the occurrence alleged in Plaintiff's Complaint, including observations she made about the injuries Mr. Dulberg attributes to the occurrence alleged in Plaintiff's Complaint. Lastly, it is anticipated that she will testify concerning all matters covered by her discovery responses and discovery deposition, if taken. Investigation continues.

e. Mike Thomas. If called upon to testify, Mr. Thomas may testify about his age, education and work experience. He may testify concerning his connection to Paul Dulberg. He may also testify concerning observations he made about Mr. Dulberg's state of health after the occurrence alleged in Plaintiff's Complaint, including observations he made of Mr. Dulberg performing roofing work and moving lumber. Lastly, it is anticipated that he will testify concerning all matters covered in his discovery deposition, if taken. Investigation continues.

f. Investigation continues.

Illinois Supreme Court Rule 213(f)(2) – Independent Opinion Witnesses.

To the extent any of the individuals disclosed above as potential Rule 213(f)(1) witnesses also qualify for disclosure as an independent expert witness within the meaning of Illinois Supreme Court Rule 213(f)(2), the responding Defendants incorporate the above Rule 213(f)(1) disclosure as though fully and completely set forth herein as a Rule 213(f)(2) disclosure. Answering further, the responding Defendants further incorporate the identity and opinions of any medical provider that treated Plaintiff for injuries he claims are associated with the occurrence alleged in his Complaint. For additional detail, see the medical records and materials produced by Plaintiff as part of his production response. Investigation continues.

Illinois Supreme Court Rule 213(f)(3) – Controlled Opinion Witnesses.

None at this time. Answering further, Defendants reserve the right to retain and disclose controlled opinion witnesses and will do so, if necessary, in accordance with all applicable court orders and discovery rules.

24. List the names and addresses of all other persons (other than yourself and persons heretofore listed) who have knowledge of the facts of said occurrence and/or of the injuries and damages claimed to have resulted therefrom.

ANSWER: None, other than as disclosed in response to the interrogatories above.

25. Identify any statements, information and/or documents known to you and requested by any of the foregoing Interrogatories which you claim to be work product or subject to any common law or statutory privilege, and with respect to each Interrogatory, specify the legal basis for the claim as required by Supreme Court Rule 201(n).

ANSWER: None at this time.

26. State the name and address of each person at the premises (although maybe at different location or not a witness to the incident) described at the time of the occurrence.

ANSWER: See response to Interrogatory Nos. 1 and 2.

27. Was the Plaintiff struck and injured by the chain saw while in operation on the date and time alleged. If so, what caused the chain saw to strike the Plaintiff.

ANSWER: On information and belief, yes. Answering further, Defendants were not present at the time of the occurrence. See answer to Interrogatory No. 9.

28. Describe what, if any, of the Plaintiff's conduct caused or contributed to his injury on the date and time in question.

ANSWER: See answer to Interrogatory No. 9.

29. Did the chain saw malfunction at any time during its use prior to Plaintiff's alleged injury.

ANSWER: To the best of the answering parties' knowledge, no.

30. Prior to Plaintiff's alleged injury, was the subject chain saw operating safely and properly.

ANSWER: To the best of the answering parties knowledge, yes.

CAROLYN MCGUIRE and BILL MCGUIRE,
Defendants, by their attorneys,
CICERO, FRANCE, BARCH & ALEXANDER, P.C.,

By _____
RONALD A. BARCH (6209572)

Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

BILL McGUIRE, being first duly sworn on oath, deposes and states that he is one of the defendants herein; that he has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of his knowledge and belief.

Bill McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

Notary Public

OFFICIAL SEAL
RONALD A BARCH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 06/07/14

STATE OF ILLINOIS)
) SS
COUNTY OF WINNEBAGO)

CAROLYN McGUIRE, being first duly sworn on oath, deposes and states that she is one of the defendants herein; that she has read the foregoing interrogatory answers; and that the interrogatory answers herein are true, correct and complete to the best of her knowledge and belief.

Carolyn McGuire

Carolyn McGuire

Subscribed and sworn to before
me on the 6th day August, 2012.

Notary Public

OFFICIAL SEAL
RONALD A BARCH
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES: 05/07/14

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was served upon:

Attorney Hans A. Mast
Law Offices of Thomas J. Popovich
3416 West Elm Street
McHenry, IL 60050

by depositing the same in the United States Post Office Box addressed as above, postage prepaid, at Rockford, Illinois, at 5:00 o'clock p.m. on 8/6/12.



Cicero, France, Barch & Alexander, P.C.
6323 East Riverside Blvd.
Rockford, IL 61114
815/226-7700
815/226-7701 (fax)

STATE OF ILLINOIS)
) SS
COUNTY OF MCHENRY)

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

PAUL DULBERG, Plaintiff(s), vs. DAVID GAGNON, Individually, and as Agent of CAROLINE MCGUIRE and BILL MCGUIRE, and CAROLINE MCGUIRE and BILL MCGUIRE, Individually, Defendant(s).	CASE NO. 12LA000178

ANSWERS TO CO-DEFENDANT INTERROGATORIES

The Defendant, DAVID GAGNON, in response to the Interrogatories propounded states as follows:

1. State the full name, present residence address and birth date of the person answering these Interrogatories.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128
DOB: 4/3/1697

2. State your marital status on the date of the occurrence in question and, if married, your spouse's name and age on said date.

ANSWER: Married; Pamela Gagnon, 39010 90th Place, Genoa City Wisconsin 53128.

3. State the full name and present or last known address (indicating which) of each person who:

(a) Witnessed or claims to have witnessed the occurrence in question.
(b) Was present or claims to have been present at the scene immediately before said occurrence.
(c) Was present or claims to have been present immediately after said occurrence.
(d) Otherwise has or claims to have any knowledge of the facts or possible causes of the occurrence to include any damages or injuries alleged to have resulted from said occurrence.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128; Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050; Carolyn McGuire, 1016 W. Elder

EXHIBIT
Gagnon 3
PENGAD 800-631-6989

Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051.

4. State specifically and with certainty the personal injuries and property damage, if any, sustained by PAUL DULBERG as a result of said occurrence.

ANSWER: Defendant has no knowledge regarding the plaintiff's personal injuries and/or property damage claims.

7. State whether PAUL DULBERG was hospitalized or had suffered any illness or personal injury prior to or subsequent to the date of said occurrence, and if so, state the nature and date of each such hospitalization, illness or personal injury.

ANSWER: I do not know.

8. State whether PAUL DULBERG suffered any permanent scarring as a result of the accident alleged in the complaint. If so, state the location of such scar, the width and length of such scar or scars. (Pursuant to Supreme Court Rule 214, please attach any photos of any such scar to your answers hereto.)

ANSWER: I do not know.

9. State whether prior to the accident alleged in the complaint PAUL DULBERG suffered any physical disability or impairment of any kind whatsoever. If so, state the nature of such physical disability or impairment and how PAUL DULBERG came to have such physical disability or impairment.

ANSWER: I do not know.

10. State the location of the alleged occurrence, pinpointing such location in feet, inches and direction from fixed objects or boundaries at the scene of the occurrence.

ANSWER: The accident occurred in ~~front~~ BACK of my parent's home at 1016 W. Elder Avenue, McHenry Illinois 60051.

11. State with particularity the nature of the alleged defect, object substance or condition which caused the alleged occurrence giving the exact dimensions and physical description of such including the size, shape, color, height, length and depth of such defect or object.

ANSWER: Chainsaw, EFCO, Model # MT3500, 2.38 Cubic Inch, 16" blade.

12. State with particularity what PAUL DULBERG was doing at the time of the accident alleged in the complaint.

ANSWER: He was helping me trim a tree by holding a branch.

13. State with particularity what DAVID GAGNON was doing at the time of the accident alleged in the complaint.

ANSWER: I was cutting through a branch with the chainsaw.

14. State with particularity the address for David Gagnon on June 28, 2011.

ANSWER: 39010 90th Place, Genoa City Wisconsin 53128.

15. State with particularity all the reasons why PAUL DULBERG was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I asked him to help me trim the tree at my parents' home.

16. State with particularity all the reasons why DAVID GAGNON was present on the premises known commonly as 1016 W. Elder Avenue, City of McHenry, County of McHenry, Illinois on the date of the alleged occurrence.

ANSWER: I was trimming a tree for my parents.

17. State with particularity your basis for alleging that David Gagnon was working under the supervision and control of Defendants Bill McGuire and Carolyn McGuire at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

18. State with particularity your basis for alleging that Defendants Bill McGuire and Carolyn McGuire instructed and/or advised David Gagnon in the use of a chain saw on or before the date of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

19. State with particularity your basis for alleging that David Gagnon was under the supervision and control of Defendants Bill McGuire and Carolyn McGuire and working as their apparent and actual agent on the date of and at the time of the occurrence, as asserted in your answer to Plaintiff's Complaint.

ANSWER: N/A

20. State with particularity any and all defects associated with the chain saw you believe or claim was involved in the occurrence alleged in Plaintiff's Complaint.

ANSWER: None.

21. State whether any photographs or videos were taken of the scene of the occurrence or of the persons, objects or premises involved, and if so, state the number of photographs or videos taken, their subject matter and who now has custody of them.

ANSWER: No.

22. Pursuant to Supreme Court Rule 213(f), furnish the identity and addresses of witnesses who will testify at trial and the following information:

(a) For each lay witness, identify the subjects on which the witness will testify.

(b) For each independent expert witness, identify the subjects on which the witness will testify and the opinions the party expects to elicit.

(c) For each controlled expert witness, identify:

(i) the subject matter on which the witness will testify;

(ii) the conclusions and opinions of the witness and the bases therefor;

(iii) the qualifications of the witness; and

(iv) any reports prepared by the witness about .the case.

ANSWER: David A. Gagnon, 39010 90th Place, Genoa City Wisconsin 53128— This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his insurance policy and coverage; maintenance, repair and inspection of the chainsaw; as to any dangerous or defective area on the premises. This witness is also expected to testify regarding his observations of the plaintiff before, during and after the alleged occurrence; his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Paul Dulberg, 4606 Hayden Ct, McHenry Illinois 60050—This witness is expected to testify to any dangerous or defective condition that he saw and/or was aware of; his relationship to the tenants of the building; his observations prior, during and after his alleged injury; the nature of his injury, medical bills, medical records and recovery; his understanding of his injury and recovery. This witness is also expected to testify to his understanding as to the facts of the accident; his observations of the scene and he is expected to testify as to any conversations which took place between the parties and witnesses. This witness is also expected to testify consistent with any testimony he may have given and/or may give at a discovery deposition.

Carolyn McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051; William McGuire, 1016 W. Elder Avenue, McHenry Illinois 60051— These witnesses are expected to testify as to their ownership of the property in question; their insurance policy and coverage; their knowledge of the area, chainsaw and tree; maintenance, repair and inspection of the chainsaw; as to any violations the premises; as to any dangerous or defective area on the premises. These witnesses are also expected to testify regarding their observations of the plaintiff before, during and after the alleged occurrence; their understanding as to the facts of the accident; their observations of the scene and they are expected to testify as to any conversations which took place between the parties and witnesses. These witnesses are also expected to testify consistent with any testimony they may have given and/or may give at a discovery deposition.

Under penalties as provided by law pursuant to 735 ILCS 5/1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he/she verily believes the same to be true.

David A. Gagnon

DAVID GAGNON

I HEREBY CERTIFY that on 1/31/13, a true and correct copy of the foregoing Answers to Interrogatories were filed with the Clerk of the Circuit Court of McHenry County and a copy of same was also mailed to:

Hans A. Mast
Law Offices of Thomas J. Popovich, P.C.
3416 W Elm St
McHenry IL 60050

Attorney for Plaintiff(s) Paul Dulberg

Cicero, France, Barch & Alexander PC
6323 East Riverside Blvd
Rockford, IL 61114

Attorney for Co-Defendants, Caroline and Bill McGuire

LAW OFFICE OF M. GERARD GREGOIRE
200 N LaSalle St Ste 2650
Chicago, IL 60601-1092
Telephone: 312-558-9821

By: _____
PERRY A. ACCARDO
Firm No.: 46878
E-MAIL ADDRESS:
ILLINOISLEGAL@ALLSTATE.COM
Attorney Bar No.: 6228720
Attorney for Defendant(s):
David Gagnon

Allstate.
You're in good hands.

Claim# 0245281968.1 -RED

To Whom It May Concern:

I, Olivia Leach, employee of Allstate Insurance Company Irving, Texas, do certify that the enclosed is a copy of policy and or declaration page for the above claim number, showing the coverages that were on the policy at the time of loss of 06/28/2011. The enclosed copy of policy and or declaration page was printed and mailed through Allstate's Output Processing Center.

Olivia Leach
Claim Support

State of Texas, County of Dallas

On this 15th day of February 2016, before me personally appeared Olivia Leach to me known to be the person who executed the foregoing instrument and acknowledged that he/she executed the same as a free act and deed.

PATRICIA TORRES
Notary Public, State of Texas
My Commission Expires
October 31, 2017

Patricia Torres
Notary Public

RECEIVED
FEB 16 2016
STAFF COUNSEL

Michael Koch Ins
612 S Wells, Unit F
Lake Geneva WI 53147

Your Quick Insurance Check

- ✓ Verify the information listed in the Policy Declarations.
- ✓ Please call if you have any questions.
- ✓ Now you can pay your premium before your bill is issued - visit allstate.com or call 1-800-Allstate®.

David and Pam Gagnon
39010 90th Pl
Genoa City WI 53128-2402

With this renewal, keep getting protection and rewards like never before.

Allstate® Your Choice Home Insurance—Your Renewal Offer
We're pleased to offer to renew your Allstate Property and Casualty Homeowners policy with the Your Choice Home Gold Protection package for another year.

With this package, you're saying YES to extra benefits, including:

- Being renewed regardless of the number of claims you have.
- For remaining claim-free, a credit of up to 5% to apply towards your next renewal premium.
- Extended protection in the event of a covered loss.
- Increased coverage for contents and valuables inside your home.
- Coverage for theft of jewelry, watches and furs—up to $5000.

Be sure to check the **Your Benefits and Opportunities** page, which provides information about the Gold Protection package features, along with ways to save even more on your premium. And don't forget that we now offer new Personalized Options, which provide tailored coverages designed to meet the needs of today's homeowner—details are also highlighted on the Your Benefits and Opportunities page.

Additional Information
You'll want to review the attached Policy Declarations to make sure you're comfortable with the coverage choices you've made. Also, unless a mortgage company or lienholder pays your insurance premium for you, your bill will be sent to you separately. If you're enrolled in the Allstate Easy Pay Plan, you won't receive a bill. Instead, we'll send you a statement detailing your payment withdrawal schedule.

(over)

PROP *5100048100810530042210O1* 000000912697167 070 065 WI

Information as of August 10, 2010

RP468

Have Questions? Please Contact Us
□o learn more about Personalized Options, or if you have □uestions about your policy, please call your Allstate representative at (□6□)□48086□.For online services, such as making a payment or viewing policy information, you can register at our Customer Care Center on *allstate.com*. And for □4-hour-a-day, □-day-a-week service and information, just call □-800-A□□S□A□E® (□-800-□55-□8□8).

We Appreciate Your Business
□hanks again for choosing Allstate—where you get more than just great coverage and service. You get Allstate's □5 years of business experience behind you. So you're working with a team of people who know insurance and give you the freedom to manage your policy your way.



Frederick F. Cripe
President, Allstate Property and Casualty Insurance Company

1008105300422 41097383

More Ways To Save

There are a variety of ways to save money on your Allstate homeowners insurance. Below are just a few discounts and savings options that may be available in your area (subject to qualifications).

Home Buyer Discount
For those who have recently purchased a home that is less than 50 years old.

Claim Free Discount
For those who maintain a property policy for at least one year prior to their Allstate policy's effective date and have no claims within five years.

55 and Retired Discount
For those who are retired and over age 55.

Home and Auto Discount
For those who insure their home, condo, mobile home or apartment through Allstate, as well as their auto.

Age of Home Discount
A varying discount based on the age of home (under 50 years old)—the newer the home, the larger the discount.

Partially Renovated Home Discount
For those with certain home renovations that were completed by a licensed contractor (such as a new roof or updated electrical or plumbing systems).

To learn more about these and other discounts available in your area, contact your Allstate representative today!

IMPORTANT INFORMATION

Please read the following about the Gold Protection package features.

Guaranteed Renewal for Claims
Regardless of the number of claims you have, your policy will be renewed. But note that your policy may still be non-renewed for other reasons including type of claim and condition of property.

Claim-Free Bonus
For every designated twelve-month period that your policy is claim-free, a Claim-Free Bonus of up to 5% of your current policy's premium will be returned to you in the form of a credit that can be applied toward your next twelve-month renewal premium. If your policy does not renew, the credit amount will be applied to any outstanding premium balance, and any remainder refunded to you.

Note: this document provides general information about the features of the Gold Protection package you selected. The specific details, which govern how the features apply, are shown in Allstate's rates, rules, and/or forms currently in effect. Additionally, continuation of your policy is subject to Allstate's underwriting criteria.

X71644 -1

Allstate Property and Casualty Insurance Company

RENEWAL

Homeowners Policy Declarations

Summary

NAMED INSURED(S)	YOUR ALLSTATE AGENT IS:	CONTACT YOUR AGENT AT:
David and Pam Gagnon 39010 90th Place Genoa City WI 53128-2402	Michael Koch Ins 612 S Wells, Unit F Lake Geneva WI 53147	(262) 248-0861

POLICY NUMBER	POLICY PERIOD	PREMIUM PERIOD
9 12 697167 10/24	Begins on Oct. 24, 2010 at 12:01 A.M. standard time, with no fixed date of expiration	Oct. 24, 2010 to Oct. 24, 2011 at 12:01 A.M. standard time

LOCATION OF PROPERTY INSURED
39010 90th Place, Genoa City, WI 53128-2402

MORTGAGEE
- WELLS FARGO BANK NA 936 ITS SUCCESSORS &/OR ASSIGNS
  P O Box 100515 Florence SC 29502-0515 *Loan # 0254903834*

Total Premium for the Premium Period *(Your bill will be mailed separately)*

Premium for Property Insured	$565.91
Premium for Scheduled Personal Property Coverage	$50.00
TOTAL	**$615.91**

Your premium reflects the Gold Protection package.

PROP *5100048100810530042210O3*

Information as of August 10, 2010

Allstate Property and Casualty Insurance Company

Policy Number: 9 12 697167 10/24 Your Agent: Michael Koch Ins (262) 248-0861
For Premium Period Beginning: Oct. 24, 2010

COVERAGE AND APPLICABLE DEDUCTIBLES (See Policy for Applicable Terms, Conditions and Exclusions)	LIMITS OF LIABILITY	
Dwelling Protection - with Building Structure Reimbursement Extended Limits • $500 All Peril Deductible Applies	$135,174	
Other Structures Protection • $500 All Peril Deductible Applies	$60,186	
Personal Property Protection - Reimbursement Provision • $500 All Peril Deductible Applies	$101,381	
Additional Living Expense	Up To 12 Months	
Family Liability Protection	$300,000	each occurrence
Guest Medical Protection	$1,000	each person

DISCOUNTS Your premium reflects the following discounts on applicable coverage(s):

Protective Device (SPP)	5.00 %	Home and Auto	35.00 %
Protective Device	3.00 %	Claim Free	15.00 %

RATING INFORMATION

The dwelling is of Frame construction and is occupied by 1 family
Your dwelling is 2 mile(s) to the fire department

Allstate Property and Casualty Insurance Company

Policy Number: **9 12 697167 10/24** Your Agent: **Michael Koch Ins (262) 248-0861**
For Premium Period Beginning: **Oct. 24, 2010**

Scheduled Personal Property Coverage

Your policy includes Scheduled Personal Property Coverage. Please refer to the Scheduled Personal Property endorsement (form APC273) for terms, conditions and exclusions applicable to your Scheduled Personal Property Coverage.

PROPERTY CLASS(ES) AND APPLICABLE DEDUCTIBLES	TOTAL OF INDIVIDUAL ITEM LIMITS PER CLASS (See your APC273 for coverage limits applicable for each scheduled item)
Jewelry	$5,265

Your Policy Documents

Your Homeowners policy consists of this Policy Declarations and the documents listed below. Please keep these together.

- Homeowners Policy form APC268
- Extended Protection Amendatory End. form APC270
- Scheduled Personal Property End. form APC273
- Wisconsin Homeowners Amendatory End. form APC242-2
- Lender's Loss Payable Endorsement form APC275
- Guaranteed Renewal for Claims form APC308

Important Payment and Coverage Information

The Property Insurance Adjustment condition applies.

Do not pay. Mortgagee has been billed.

IN WITNESS WHEREOF, **Allstate Property and Casualty Insurance Company** has caused this policy to be signed by two of its officers at Northbrook, Illinois, and if required by state law, this policy shall not be binding unless countersigned on the Policy Declarations by an authorized agent of **Allstate Property and Casualty Insurance Company.**

Frederick F. Cripe
President

Mary J. McGinn
Secretary

Allstate Property and Casualty Insurance Company

Policy Number: 9 12 697167 10/24 Your Agent: Michael Koch Ins (262) 248-0861
For Premium Period Beginning: Oct. 24, 2010

Important Notice

DWELLING PROFILE

Allstate has determined that the estimated cost to replace your home is : $132,532

The enclosed Policy Declarations shows the limit of liability applicable to Coverage A—Dwelling Protection of your homeowners insurance policy. The estimated replacement cost of your home is the minimum amount for which we will insure your home.

The decision regarding the limit applicable to your Coverage A — Dwelling Protection is your decision to make, as long as, at a minimum, your limit equals the estimated replacement cost as determined by Allstate and does not exceed maximum coverage limitations established by Allstate.

It is important to keep in mind that your Coverage A limits reflect a replacement cost that is only an estimate based on data that was available to us when we made this estimate (this data is described further below). The actual amount it will cost to replace your home cannot be known until after a covered total loss has occurred.

How is the replacement cost estimated?
Many factors can affect the cost to replace your home, including its age, size, and type of construction. For example, the replacement cost uses construction data, such as labor and materials, that are available to us when we made this estimate. This estimate is also based on characteristics of the home, which include information that you provided to us. You might have chosen to insure your home for a higher amount than the estimated replacement cost shown above.

Note to customers renewing their policy
The estimated replacement cost for your home may have changed since the last time we communicated this information to you. This is because, at renewal, Allstate uses the home characteristics that you have provided to us to recalculate and update the estimated replacement cost. Using updated labor and material rates for your zip code, Allstate takes the home characteristics you have provided and determines the updated estimated replacement cost. The information about your home's characteristics is provided below.

If the information about your home shown below requires any change or if you have any questions or concerns about the information contained in this Important Notice, please contact your Allstate representative, or call us at 1-800-Allstate.®

DWELLING STYLE: 1.0 Story(s), 1 Family(s), Built 1958, Living Area 830 sq. ft.

FOUNDATION: 100% Slab

ADDITIONS: Detached Structures -- Detached Garage - 3 Car (1)

Detached Structures -- Shed - Large (1)

Interior -- Kitchen - Average (1)

Interior -- Full Bath - Designer (1)

DETAIL: Exterior Walls -- Aluminum Siding 100 %

Roofing -- Asphalt/Fiberglass Shingle 100 %

Interior Partitions -- Drywall 100 %

Interior Partitions -- Less than 10 ft Wall Height 100 %

Heating & Cooling -- Heat & Central Air Cond. - Avg Cost 100 %

SPECIAL FEATURES: Exterior -- Bay Windows (1)

Decrease Language:

Additional information about Dwelling Protection limits

Your policy includes a feature called "Property Insurance Adjustment" (PIA). PIA reflects changes in construction costs in your area that may have occurred during the policy period. This information is useful in estimating the amount of insurance coverage needed to cover the cost of rebuilding your home in the event of a covered total loss.

We would like you to know that your policy's PIA recently indicated that certain construction costs in your market have declined. Based on this information, you may decide to lower your Dwelling Protection limits. If you choose to lower your Coverage A—Dwelling Protection limits, your premium will decrease accordingly. Please note that decreasing your Dwelling Protection limits may result in decreases in other coverages that are tied to your Coverage A limits and could lower your premium.

It is important for you to understand that PIA estimates are only estimates and lowering your Dwelling Protection limits may leave you with insufficient coverage in the event of a loss. For example, if you have done any remodeling to your home which has not been updated in our records, your home's replacement cost may be higher than our current records indicate. In that case, you may want to maintain or even increase your limits. Conversely, there is a possibility that your current limits may provide coverage in excess of the actual replacement cost of your home not only based on the PIA estimate, but on other considerations. For example, if you originally decided to insure your home at an amount that exceeded the estimated replacement cost, you may want to call your Allstate representative to discuss the current value of your home and the possibility of lowering your limits.

If you have any questions about PIA, or your policy in general, please contact your Allstate representative.

X67831

Allstate Property and Casualty Insurance Company

Policy Number: 9 12 697167 10/24 Your Agent: Michael Koch Ins (262) 248-0861
For Premium Period Beginning: Oct. 24, 2010

Important Notice

Allstate's Privacy Policy

At Allstate, we value you as a customer and share your concerns about privacy. To help you understand how we treat the nonpublic personal information ("customer information") that we obtain from you or other sources in the course of providing you with products and services, this notice describes our use and protection of that information.

Whether you're doing business with us through your local agent or broker, our Customer Information Center, or allstate.com, we want you to know that Allstate respects your privacy and protects your information.

- We do not sell customer information.
- We do not share your customer information with persons, companies, or organizations outside of Allstate that would use that information to contact you about their own products and services.
- We expect persons or organizations that provide services on our behalf to keep customer information confidential and to use it only to provide the services we've asked them to perform.
- Within Allstate, we communicate to our employees regarding the need to protect customer information, and we've established physical, electronic, and procedural safeguards to protect customer information.

Below we've provided answers to questions that might be on your mind regarding privacy. You may be wondering . . .

What do we do with your customer information?
Allstate does not sell your customer information, or medical information, to anyone. Nor do we share it with companies or organizations outside of Allstate that would use that information to contact you about their own products and services. If that practice were ever to change, we would, of course, offer you the ability to opt out of this type of information sharing, and we would offer you the opt-out with time for you to respond before the change in our practice took place.

Your agent or broker may use customer information to help you with your overall insurance program. We may also communicate with you about products, features, and options you have expressed an interest in or that we believe may be of interest to you. We may, without authorization but only as permitted or required by law, provide customer information to persons or organizations both inside and outside of Allstate to fulfill a transaction you have requested, service your policy, market our products to you, investigate or handle claims, detect or prevent fraud, participate in insurance support organizations, or comply with lawful requests from regulatory and law enforcement authorities. These persons or organizations may include: our affiliated companies, companies that perform marketing services on our behalf, other financial institutions with which we have a joint marketing agreement for the sale of our own products, and your agent or broker.

What kind of customer information do we have, and where did we get it?
Much of the customer information that we have about you comes directly from you. When submitting your application or request for insurance or other products and services we offer, or requesting an insurance quote, you may give us information such as your name, address, and Social Security number. We keep information about your transactions with our affiliates, others or us --for example, the types of products and services you purchase from us, premiums, account balances, and payment history.

PROP *5100048100810530042210006*



We also may collect information from outside sources, including consumer reporting agencies and health care providers. This information may include loss information reports, motor vehicle reports, credit reports, and medical information.

How do we protect your customer information?
When we share customer information with companies working on Allstate's behalf, we expect those companies to use that information only to provide the service we have asked them to perform. Within Allstate, customer information is available to those individuals who may need to use it to fulfill and service the needs of Allstate customers. We communicate the need to protect customer information to all employees and agents, especially those individuals who have access to it. Plus, we've established physical, electronic, and procedural safeguards to protect customer information.

Finally, should your relationship with Allstate end, your customer information will remain protected in accordance with our privacy practices as outlined in this Important Notice.

How can you find out what information we have about you?
You may request to either see, or obtain from us by mail, the customer information about you in our records. If you believe that information is incomplete or inaccurate, you may request that we make any necessary corrections, additions or deletions to the disputed customer information. To fulfill your request, we may make arrangements with an insurance support organization or a consumer reporting agency to copy and disclose customer information to you on our behalf. You may also request a more complete description of the entities to which we disclose customer information, or the circumstances that might warrant such disclosures. Please send any of the requests listed above in writing to: Allstate Insurance Company, Customer Privacy Inquiries, P.O. Box 11904, Roanoke, VA 24022.

If you are an Internet user. . .
Our website, allstate.com, provides information about Allstate, our products, and the agencies and brokers that represent us. You may also perform certain transactions on the website. When accessing allstate.com, please be sure to read the Privacy Statement that appears there.

To learn more, the allstate.com Privacy Statement provides important information relating to your use of the website, including, for example, information regarding: 1) our use of online collecting devices known as "cookies"; 2) our collection of information such as IP address (the number assigned to your computer when you use the Internet), browser and platform types, domain names, access times, referral data, and your activity while using our site; 3) who should use our web site; 4) the security of information over the Internet and 5) links and co-branded sites.

We hope you have found this Important Notice helpful. If you have any questions or would like more information, please don't hesitate to contact your Allstate agent or call the Allstate Customer Information Center at 1-800-Allstate.

X68086

This notice is being provided on behalf of the following companies:

Allstate County Mutual Insurance Company
Allstate Indemnity Company
Allstate Investment Management Company
Allstate New Jersey Insurance Company
Allstate Texas Lloyd's
Allstate Fire and Casualty Insurance Company
Allstate Insurance Company
Allstate Motor Club, Inc.
Allstate Property and Casualty Insurance Company
Allstate Texas Lloyd's, Inc.

Allstate Property and Casualty Insurance Company

Policy Number: 9 12 697167 10/24 Your Agent: Michael Koch Ins (262) 248-0861
For Premium Period Beginning: Oct. 24, 2010

Forestview Mortgage Insurance Company
Roadway Protection Auto Club, Inc.

General Underwriters Agency, Inc.

(ed. 05/2005)

PROP *5100048100810530042210O7*



Allstate Property and Casualty Insurance Company

Policy Number: 9 12 697167 10/24 Your Agent: Michael Koch Ins (262) 248-0861
For Premium Period Beginning: Oct. 24, 2010

Important Notice

Identity Theft Expenses Coverage — Coverage for Identity Theft Victims

While modern technology has made our lives easier, it's also made it easier for thieves to commit what's become the fastest growing crime in America* — identity theft.

Thieves begin by gaining access to personal information such as your Social Security number, date of birth and driver's license number. They then use this information to set up fake accounts, open loans, rent housing, secure employment or even obtain medical care — all without you even knowing.

As this crime grows increasingly common, consumers need options for dealing with the costs and hassles related to identity theft—that's why we're offering Identity Theft Expenses Coverage.

For just $ 30 per year you can get help to restore your good name.
Now Allstate has a product that can help you if your identity is stolen. You can add this optional coverage to your property policy for just a few dollars a month—a small price to pay for peace of mind. Especially when you consider that while other insurance companies typically require a deductible for similar protection, with Allstate there is no deductible.

Allstate takes identity theft expense coverage a step further.
If you purchase this coverage we'll reimburse you for covered expenses you incur to restore your identity up to a $25,000 coverage limit. That's more than most companies offer for this type of coverage. This coverage includes reimbursement for:

- ***Attorneys fees*** (subject to applicable coverage limits)—in case you need to hire an attorney to defend you if lawsuits are brought against you by merchants or collection agencies, if you need help to remove criminal or civil judgements wrongly entered against you, or to challenge information contained in your credit report.

- ***Lost wage recovery*** (up to $250/day with a $5,000 cap) — this will help cover wages or salary you may lose if you need to take time off work to complete affidavits or meet with law enforcement agencies, financial institutions, credit grantors, credit reporting agencies or attorneys.

- ***Loan reapplication fees*** — this covers your expenses if you need to reapply for loans denied you solely because the lender received incorrect information due to identity theft.

- ***Other expenses*** — covers other expenses involved in restoring your identity, such as mailing costs, notary expenses and long distance phone calls.

You can get help if you become a victim.
If you ever become a victim of identity theft, you probably won't know all that is involved in restoring your name. There are many issues you would need help with, including:

- Understanding your rights as an identity theft victim.
- Filling out paperwork, including police reports.
- Issuing a Fraud Alert to the three major credit bureaus, as well as Social Security Administration, Federal Trade Commission, and U.S. Postal Service.
- Obtaining copies of your credit bureau reports.
- Working with the three major credit bureaus to restore the accuracy of your credit history.
- Reviewing your credit history to verify if fraud includes items such as public records, (liens, judgements, bankruptcies); credit accounts; or errors with addresses/prior employment.
- Issuing a fraud alert to affected financial institutions and credit card companies.
- Tracing Social Security numbers, notifying and working with the Department of Motor Vehicles, collection agencies for creditors, and law enforcement personnel.

This may seem overwhelming, but our Identity Theft Expenses Coverage can help. With it, if you decide to hire a firm to help you address identity theft issues such as these, you will have up to $2,000 available to pay for their services. In addition, we may refer you to a firm that specializes in addressing the effects of identity theft.** In either case, if you have this coverage you'll have peace of mind knowing you can get help to restore your identity.

Are you in Good Hands® ?
With Allstate you have 75 years of business experience behind you. That means you're getting more than great products and service. You get a team of people who know insurance and give you the freedom to manage your insurance your way. To sign up for Identity Theft Expenses Coverage, or for more information, just call your Allstate representative, or log onto *allstate.com*.

You should never be alone. That's our stand.

**Referrals, if any, are solely at the discretion of Allstate. Identity Theft Expenses Coverage is subject to policy terms. Please read the policy endorsements carefully.

* Federal Trade Commission Identity Theft Survey Report, September 2003

X71831

PROP *5100048100810530042210O8*

Allstate Property and Casualty Insurance Company

Policy Number: 9 12 697167 10/24 Your Agent: **Michael Koch Ins (262) 248-0861**
For Premium Period Beginning: **Oct. 24, 2010**

Important Notice

Important Information About Your Allstate Policy

The enclosed Policy Declarations includes important information, such as your address, the coverages and coverage limits you've chosen, the names of insured persons — as well as other details pertinent to your policy. These details may include, for example, for motor vehicle policies, the drivers and vehicles you've insured, as well as the vehicle identification numbers (VIN) assigned to your insured vehicles; and, for property policies, the location of the insured property and mortgagee information, if applicable. Your Policy Declarations also lists any discounts or surcharges applied to your policy.

Because much of the information found on your Policy Declarations is used to help us determine your premium, please be sure to review your Policy Declarations carefully each time you receive one. You may want to add coverage, delete coverage or change your coverage limits — or you may want to change other information relating to your policy, whether it be a motor vehicle, your home or other insured property. You may also want to contact your Allstate representative for information concerning discounts that may be available for your policy.

Making changes to your policy

If you need to make a change to any of the information listed on your Policy Declarations, please notify your Allstate representative of the change as soon as possible. With a few exceptions, **any changes will be effective as of the date you notify us.**

If you have any questions about this notice, or if you need to update any of the information listed on the enclosed Policy Declarations, please contact your Allstate agent or our Customer Information Center at 1-800-ALLSTATE (1-800-255-7828).

X67096

Allstate Property and Casualty Insurance Company

Policy Number: 9 12 697167 10/24 Your Agent: Michael Koch Ins (262) 248-0861
For Premium Period Beginning: Oct. 24, 2010

Important Notice

Information about Flood Insurance

Protection against flood damage

Most homeowners, renters and commercial insurance policies do not provide coverage for damage caused by floods. In fact, protection against floods is generally available only through a separate policy.

That's why Allstate is a participant in the National Flood Insurance Program and offers standard flood insurance policies*. A flood policy can help complete the insurance protection for your property and help protect your financial well-being.

You may need it more than you think

Approximately 90% of all disasters in the U.S. are flood related. While you may think that it couldn't happen to you, over 25% of all flood losses occur in low to moderate risk areas.

And because flood damage is often accompanied by other damage, such as wind and hail (which is typically covered under a property policy), selecting Allstate gives you the convenience and peace of mind that comes with working with just one claim adjuster and one agent, instead of two or more.

It's affordable

The federal government sets the rates for flood insurance, so there's typically no difference in rates from policy to policy -- you can generally switch to a flood insurance policy administered by Allstate for the same amount of premium. If you choose Allstate, you can have the service, convenience and comfort you've come to expect from us.

For more information about flood insurance, or if you have any questions about your policy in general, please contact your Allstate representative or visit us at *allstate.com*.

* Allstate provides the standard flood insurance policy under the terms of the National Flood Insurance Act of 1968 and its amendments, and Title 44 of the Code of Federal Regulations. The standard flood insurance policy is written by Allstate for the National Flood Insurance Program which is administered by the Federal Insurance Administration, part of the Federal Emergency Management Agency.

Subject to availability and qualifications. Other terms, conditions and exclusions may apply.

PROP *5100048100810530042210O9*



Allstate Property and Casualty Insurance Company

Policy Number: 9 12 697167 10/24 Your Agent: Michael Koch Ins (262) 248-0861
For Premium Period Beginning: Oct. 24, 2010

Information about Scheduled Personal Property Coverage

Protection for your valuables

Allstate offers Scheduled Personal Property (SPP) coverage to help protect your valuables.

These items can include jewelry (such as engagement and wedding rings), fine art and musical instruments. Sports equipment, such as golf clubs, can also be covered by SPP.

In addition, SPP can cover valuables stored outside of your home in a safe deposit box or bank. And if you work from home and use computer or audio-visual equipment for business purposes, SPP can cover these items as well.

Already have SPP?

Even if you currently have SPP coverage, it's a good idea to review your coverage annually. It's possible that the value of your property has changed or that you have purchased new items that have not been added to your coverage.

Affordable coverage

The cost of SPP coverage varies, but the value of your property is the best way to determine how much coverage you need –the rates are generally a small percentage of the total value of the items you're insuring. This could mean that your valuables are being protected for only a fraction of the cost.

To learn more about SPP coverage, or if you have any questions about your insurance policy in general, contact your Allstate representative, or visit us at *allstate.com*.

Subject to availability and qualifications. Other terms, conditions and exclusions may apply.

X68087

Allstate Property and Casualty Insurance Company

Policy Number: **9 12 697167 10/24** Your Agent: **Michael Koch Ins (262) 248-0861**
For Premium Period Beginning: **Oct. 24, 2010**

Important Notice

Thank you for being a customer with us. This notice is to inform you that you have the right to cancel this policy whenever you choose by simply contacting your insurance representative or calling us directly at 1-800-255-7828.

Of course, we hope that you never decide to discontinue your relationship with us. We appreciate your business, and we hope to have the opportunity to provide you with the insurance coverage you need for as long as you need it.

X72880

PROP *5100048100810530042210 10*



Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Wisconsin Homeowners Amendatory Endorsement – APC242-2

This endorsement amends your Homeowners Policy and is in addition to all other amendatory endorsements which apply to this policy.

I. In the **General** section, the following changes are made:

A. The **Cancellation** provision is replaced by the following:

Cancellation
Your Right to Cancel:
You may cancel this policy by returning it to **us** or by notifying **us** in writing of the future date **you** wish to stop coverage.

Our Right to Cancel:
Allstate may cancel this policy by mailing notice to **you** at the mailing address shown on the Policy Declarations. When this policy has been in effect for less than 60 days, and it is not a renewal with **us**, **we** may cancel this policy for any reason.

When this policy has been in effect for 60 days or more, or if it is a renewal with **us**, **we** may cancel this policy for one or more of the following reasons:
1) non-payment of premium;

2) the policy was obtained by misrepresentation, fraud or concealment of material facts; or

3) there has been substantial change or increase in hazard in the risk **we** originally accepted.

If **we** cancel this policy, **we** will give **you** at least 10 days notice before the cancellation takes effect. **Our** mailing the notice of cancellation to **you** will be deemed to be proof of notice. Coverage under this policy will terminate on the effective date and hour stated on the cancellation notice. **Your** return premium, if any, will be calculated on a pro rata basis and refunded at the time of cancellation or as soon as possible. However, refund of unearned premium is not a condition of cancellation.

B. **Our** Right Not to Renew or Continue is replaced by the following:

Our Right Not to Renew or Continue:
We have the right not to renew or continue the policy beyond the current premium period. If **we** do not intend to continue or renew the policy, **we** will mail **you** notice at least 60 days before the end of the premium period. **Our** mailing notice of non-renewal to **you** will be deemed proof of notice.

Any unearned premium amounts under $2.00 will be refunded only upon **your** request.

C. **Misrepresentation, Fraud or Concealment** is replaced by the following:

If **we** determine that this policy is void, all premiums paid will be returned to **you** since there has been no coverage under this policy.

We do not cover any loss or occurrence in which any **insured person** has concealed or misrepresented any material fact or circumstance and

1. **we** rely on the misrepresentation or affirmative warranty and the misrepresentation or affirmative warranty is either material or made with intent to deceive; or
2. the fact misrepresented or falsely warranted contributes to **the loss**.

D. **Action Against Us** is replaced by the following:

No one may bring an action against us unless there has been full compliance with all policy terms.

E. The following provision is added:

Conditional Reinstatement
If **we** mail a cancellation notice because **you** did not pay the required premium when due and **you** then tender payment by check, draft, or other remittance which is not honored upon presentation, **your** policy will terminate on the date and time shown on the cancellation notice and any notice we issue which waives the cancellation or reinstates coverage is void. This means that **We** will not be liable under this policy for claims or damages after the date and time indicated on the cancellation notice.

II. In **Section I—Your Property**, the following changes are made:

A. Under **Losses We Cover Under Coverage C**, Item 8 is replaced with the following:

8. **Vandalism or Malicious Mischief.**
We do not cover vandalism or malicious mischief if **your dwelling** has been vacant or unoccupied for more than 60 days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

B. In **Additional Protection—Additional Living Expense** is replaced by the following:

Additional Living Expense
We will pay the reasonable and necessary increase in living expenses and the lost fair rental income for up to two weeks should civil authorities prohibit the use of the **residence premises** due to a loss at a neighboring premises caused by a loss **we** insure against. However, payments for increase in living expenses or **your** lost fair rental income expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

We will pay **your** lost fair rental income resulting from a covered loss under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection**, less charges and expenses which do not continue, when a loss we cover under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** makes the part of the **residence premises you** rent to others, or hold for rental, uninhabitable. **We** will pay for lost fair rental income for the shortest time required to repair or replace the part rented or held for rental but not to exceed 12 months. However, payments for **your** lost fair rental income expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

C. In **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C**, under Section A., item 6. is replaced by the following:

6. Vandalism or Malicious Mischief if **your dwelling** is vacant or unoccupied for more than 60 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

D. In **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C**, under Section C., item 5., the following exception is added:

This exclusion does not apply when the **residence premises** is partially destroyed but ordered destroyed by fire ordinance or similar law.

E. In **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C**, under section C. item 8. is replaced by the following:

8. Intentional or criminal acts of or at the direction of any **insured person**, if the loss that occurs:
   a) may be reasonably expected to result from such acts; or
   b) is the intended result of such acts.

   This exclusion applies regardless of whether or not the **insured person** is actually charged with or convicted of a crime.

   We will not deny payment to an insured for a claim based on property loss or damage resulting from an act, or pattern, of abuse or domestic abuse if that insured did not cooperate in or contribute to the creation of the loss or damage and if the person who committed the act or act that caused the loss or damage is criminally prosecuted for the act or acts.

   Payment to the innocent insured may be limited in accordance with his or her ownership interest in the property or reduced by payments to a mortgagee or other holder of a secured interest.

F. In **Section I Conditions**, under **How We Pay For A Loss** provision, the following is added:

We agree that in the event of a total loss **we** will pay the **limit** of liability shown on the Policy Declarations for **Coverage A—Dwelling Protection.** This limit represents the total value of the **dwelling** on the **residence premises**, including structures attached to the **dwelling**.

G. In **Section I Conditions**, the following changes are made:

1. The **Our Settlement of Loss** provision is replaced by the following:

Our Settlement of Loss
We will settle any covered loss with **you**. **We** will settle with **you**, unless another payee is named in the policy. **We** will settle within 30 days after the amount of loss is finally determined. This amount may be determined by an agreement among **you**, any other payee or entity named in the policy and **us**, an appraisal award or a court judgment.

2. In **Action Against Us**, paragraph b. is deleted.

III. In **Section II—Family Liability and Guest Medical Protection**, the following changes are made:

A. In **Losses We Do Not Cover Under Coverage X**, the second paragraph is amended as follows:

We may investigate or settle any claim or suit for covered damages against an **insured person**. If an **insured person** is sued for these damages, **we** will provide a defense with counsel of **our** choice, even if the allegations are groundless, false or fraudulent. **We** are not obligated to pay any claim or judgment after **we** have exhausted **our** limit of liability.

B. In **Losses We Do Not Cover Under Coverage X and Coverage Y**, Section C, **Losses We Do Not Cover Under Coverage X and Coverage Y**, the following is added to item 1.:

We will not deny payment to an insured for a claim based on property loss or damage resulting from an act, or pattern, of abuse or domestic abuse if that insured did not cooperate in or contribute to the creation of the loss or damage and if the person who committed the act or act that caused the loss or damage is criminally prosecuted for the act or acts.

Payment to the innocent insured may be limited in accordance with his or her ownership interest in the property or reduced by payments to a mortgagee or other holder of a secured interest.

C. In **Section II Conditions**, subsection (a) is replaced by the following to the **What You Must Do After An Accidental Loss** provision:

a) within 20 days following the loss, notify **us** or our agent in writing, stating:
   1) **your** name and policy number;
   2) the date, the place and the circumstance of the loss;
   3) the name and address of anyone who might have a claim against an **insured person**;
   4) the names and addresses of any witnesses.

Failure to give such notice within 20 days will not invalidate any claim made by an **insured person** if:
1) that person can show it was not reasonably possible to notify **us** or **our** agent within the specified time; or
2) that such notice was given as soon as reasonably possible.

D. The **Action Against Us** provision is replaced by the following:

No one may bring an action against **us** unless there has been full compliance with all policy terms.

IV. In **Section II—Optional Protection**, the **Coverage J—Extended Coverage on Jewelry, Watches and Furs,** the following provision is added to the third paragraph that begins, "We do not cover loss caused by or consisting of"

We do not cover loss caused by, or consisting of:

a) intentional or criminal acts of or at the direction of any insured person, if the loss that occurs:
   1) may be reasonably expected to result from such acts; or
   2) is the intended result of such acts.

We will not deny payment to an insured for a claim based on property loss or damage resulting from an act, or pattern, of abuse or domestic abuse if that insured did not cooperate in or contribute to the creation of the loss or damage and if the person who committed the act or act that caused the loss or damage is criminally prosecuted for the act or acts.

Payment to the innocent insured may be limited in accordance with his or her ownership interest in the property or reduced by payments to a mortgagee or other holder of a secured interest.

All other policy terms and conditions apply.

Allstate Property and Casualty Insurance Company Homeowners Policy

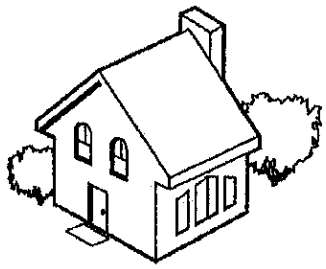
Policy: {{{{{{{{{{{{{{{{

Issued to:
}}}}}}}}}}}}}}}}
}}}}}}}}}}}}}}}}
}}}}}}}}}}}}}}}}
}}}}}}}}}}}}}}}}

Effective: ////////////////

////////////////////////////
{{{{{{{{{{{{{{{{{{{{{{{{{{{{{{{{
{{{{{{{{{{{{{{{{{{{{{{{{{{{{
{{{{{{{{{{{{{{{{{{{{{{{{{{{{

Allstate Property and Casualty Insurance Company
The Company Named in the Policy Declarations
A Stock Company---Home Office: Northbrook, Illinois 60062



APC268

Table of Contents

Agreements We Make With You....2

General
Definitions Used In This Policy....2
Insuring Agreement....4
Conformity To State Statutes....4
Coverage Changes....4
Policy Transfer....4
Continued Coverage After Your Death....4
Cancellation....4
Misrepresentation, Fraud or Concealment....5
What Law Will Apply....5
Where Lawsuits May Be Brought....5
Action Against Us....6
Arbitration....6

Section I— Your Property

Coverage A
Dwelling Protection
Property We Cover Under Coverage A....6
Property We Do Not Cover Under Coverage A....6

Coverage B
Other Structures Protection
Property We Cover Under Coverage B....6
Property We Do Not Cover Under Coverage B....7

Losses We Cover Under Coverages A and B....7

Coverage C
Personal Property Protection
Property We Cover Under Coverage C....7
Limitations On Certain Personal Property....7
Property We Do Not Cover Under Coverage C....8
Losses We Cover Under Coverage C....8

Additional Protection
Additional Living Expense....10
Credit Card, Debit Card or Automated Teller Machine Card, Bank Fund Transfer Card, Check Forgery and Counterfeit Money....10
Debris Removal....11
Emergency Removal Of Property....11
Fire Department Charges....11
Temporary Repairs After A Loss....11
Trees, Shrubs, Plants and Lawns....12
Temperature Change....12
Power Interruption....12
Arson Reward....12
Collapse....12
Land....13
Lock Replacement....13

Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C....13

Section I Conditions
Deductible....16
Insurable Interest and Our Liability....16
What You Must Do After A Loss....16
Our Settlement Options....17
How We Pay For A Loss....17
Our Settlement Of Loss....19
Appraisal....19
Abandoned Property....20
Permission Granted To You....20
Our Rights To Recover Payment....20
Our Rights To Obtain Salvage....20
Action Against Us....20
Loss To A Pair Or Set....20
Glass Replacement....20
No Benefit To Bailee....20
Other Insurance....20
Property Insurance Adjustment....20
Mortgagee....21
Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss....21

Section II—Family Liability and Guest Medical Protection

Coverage X
Family Liability Protection
Losses We Cover Under Coverage X....22

Coverage Y
Guest Medical Protection
Losses We Cover Under Coverage Y....22

Additional Protection
Claim Expense....22
Emergency First Aid....22

Damage To Property Of Others 23

Losses We Do Not Cover Under Coverage X and Coverage Y 23

Section II Conditions
What You Must Do After An Accidental Loss.....25
What An Injured Person Must Do—Coverage Y—Guest Medical Protection 26
Our Payment of Loss—Coverage Y—Guest Medical Protection.....26
Our Limits Of Liability 26
Bankruptcy 26
Our Rights To Recover Payment—Coverage X—Family Liability Protection.....26
Action Against Us.....26
Other Insurance—Coverage X—Family Liability Protection.....27

Section III—Optional Protection

Optional Coverages You May Buy
Coverage BC
Building Codes 27
Coverage BP
Increased Coverage On Business Property.....27
Coverage DP
Increased Coverage On Electronic Data Processing Equipment 27
Coverage F
Fire Department Charges 27
Coverage G
Loss Assessments.....27
Coverage J
Extended Coverage On Jewelry, Watches and Furs.....28
Coverage K
Incidental Office, Private School Or Studio.....28
Coverage M
Increased Coverage On Money.....29
Coverage P
Business Pursuits.....29
Coverage S
Increased Coverage On Securities.....29
Coverage SD
Satellite Dish Antennas 29
Coverage ST
Increased Coverage On Theft Of Silverware 29

Agreements We Make With You

We make the following agreements with **you**:

General

Definitions Used In This Policy

Throughout this policy, when the following words appear in bold type, they are defined as follows:

1. **Bodily injury**—means physical harm to the body, including sickness or disease, and resulting death, except that **bodily injury** does not include:
   a) any venereal disease;
   b) Herpes;
   c) Acquired Immune Deficiency Syndrome (AIDS);
   d) AIDS Related Complex (ARC);
   e) Human Immunodeficiency Virus (HIV);

   or any resulting symptom, effect, condition, disease or illness related to a) through e) listed above.

   In addition, **bodily injury** does not include any symptom, effect, condition, disease or illness resulting in any manner from:
   a) lead in any form;
   b) asbestos in any form;
   c) radon in any form; or
   d) oil, fuel oil, kerosene, liquid propane or gasoline intended for, or from, a storage tank located at the **residence premises**.

2. **Building structure**—means a structure with walls and a roof.

3. **Business**—means:
   a) any full- or part-time activity of any kind engaged in for economic gain including the use of any part of any premises for such purposes. The providing of home day care services to other than an **insured person** or relative of an **insured person** for economic gain is also a **business**.

      However, the mutual exchange of home day care services is not considered a **business**;

b) the rental or holding for rental of property by an **insured person**. Rental of **your residence premises** is not considered a **business** when:
   1) it is rented occasionally for residential purposes;
   2) a portion is rented to roomers or boarders, provided not more than two roomers or boarders reside on the **residence premises** at any one time; or
   3) a portion is rented as a private garage.

4. **Dwelling**—means the single family **building structure** identified as the insured property on the Policy Declarations, where **you** reside and which is principally used as a private residence.

5. **Insured person(s)**—means **you** and, if a resident of **your** household:
   a) any relative; and
   b) any person under the age of 21 in **your** care.

   Under **Coverage X—Family Liability Protection** and **Coverage Y—Guest Medical Protection**, **insured person** also means:
   a) any person or organization legally responsible for loss caused by animals or watercraft covered by this policy which are owned by an **insured person**. **We** do not cover any person or organization using or having custody of animals or watercraft in any **business**, or without permission of the owner;
   b) with respect to the use of any vehicle covered by this policy, any person while engaged in the employment of an **insured person**.

6. **Insured premises**—means:
   a) the **residence premises**; and
   b) under **Section II** only:
      1) the part of any other premises, other structures and grounds used by **you** as a residence. This includes premises, structures and grounds **you** acquire for **your** use as a private residence while this policy is in effect;
      2) any part of a premises not owned by an **insured person** but where an **insured person** is temporarily living;
      3) cemetery plots or burial vaults owned by an **insured person**;
      4) land owned by or rented to an **insured person** where a single family dwelling is being built as that person's residence;
      5) any premises used by an **insured person** in connection with the **residence premises**;
      6) any part of a premises occasionally rented to an **insured person** for other than **business** purposes.

7. **Occurrence**—means an accident, including continuous or repeated exposure to substantially the same general harmful conditions during the policy period, resulting in **bodily injury** or **property damage**.

8. **Property damage**—means physical injury to or destruction of tangible property, including loss of its use resulting from such physical injury or destruction.

9. **Remediation**—means the reasonable and necessary treatment, removal or disposal of mold, fungus, wet rot or dry rot as required to complete repair or replacement of property **we** cover under **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** damaged by a covered water loss, including payment for any reasonable increase in living expenses necessary to maintain **your** normal standard of living if mold, fungus, wet rot or dry rot makes **your residence premises** uninhabitable. **Remediation** also includes any investigation or testing to detect, measure or evaluate mold, fungus, wet rot or dry rot.

10. **Residence employee**—means an employee of an **insured person** while performing duties arising out of and in the course of employment in connection with the maintenance or use of **your residence premises**. This includes

similar duties performed elsewhere for an **insured person**, not in connection with the **business** of an **insured person**.

11. **Residence premises**—means the **dwelling**, other structures and land located at the address stated on the Policy Declarations.

12. **We**, **us** or **our**—means the company named on the Policy Declarations.

13. **You** or **your**—means the person listed under Named Insured(s) on the Policy Declarations as the insured and that person's resident spouse.

Insuring Agreement

In reliance on the information **you** have given **us**, **we** agree to provide the coverages indicated on the Policy Declarations. In return, **you** must pay the premium when due and comply with the policy terms and conditions, and inform **us** of any change in title, use or occupancy of the **residence premises**.

Subject to the terms of this policy, the Policy Declarations shows the location of the **residence premises**, applicable coverages, limits of liability and premiums. The policy applies only to losses or **occurrences** that take place during the policy period. The Policy Period is shown on the Policy Declarations. This policy is not complete without the Policy Declarations.

This policy imposes joint obligations on the Named Insured(s) listed on the Policy Declarations as the insured and on that person's resident spouse. Those persons are defined as **you** or **your**. This means that the responsibilities, acts and omissions of a person defined as **you** or **your** will be binding upon any other person defined as **you** or **your**.

This policy imposes joint obligations on persons defined as an **insured person**. This means that the responsibilities, acts and failures to act of a person defined as an **insured person** will be binding upon another person defined as an **insured person**.

Conformity To State Statutes

When the policy provisions conflict with the statutes of the state in which the **residence premises** is located, the provisions are amended to conform to such statutes.

Coverage Changes

When **we** broaden coverage during the premium period without charge, **you** have the new features if **you** have the coverage to which they apply. Otherwise, the policy can be changed only by endorsement.

The coverage provided and the premium for the policy is based on information **you** have given **us**. **You** agree to cooperate with **us** in determining if this information is correct and complete. **You** agree that if this information changes, is incorrect or incomplete, **we** may adjust **your** coverage and premium accordingly during the premium period.

Any calculation of **your** premium or changes in **your** coverage will be made using the rules, rates and forms on file, if required, for **our** use in **your** state. The rates in effect at the beginning of **your** current premium period will be used to calculate any change in **your** premium.

Policy Transfer

You may not transfer this policy to another person without **our** written consent.

Continued Coverage After Your Death

If **you** die, coverage will continue until the end of the premium period for:

1) **your** legal representative while acting as such, but only with respect to the **residence premises** and property covered under this policy on the date of **your** death.
2) an **insured person**, and any person having proper temporary custody of **your** property until a legal representative is appointed and qualified.

Cancellation

Your Right to Cancel:
You may cancel this policy by notifying **us** of the future date **you** wish to stop coverage.

Our Right to Cancel:
We may cancel this policy by mailing notice to **you** at the mailing address shown on the Policy

Declarations. When this policy has been in effect for less than 60 days, and it is not a renewal with **us**, **we** may cancel this policy for any reason by giving **you** at least 10 days notice before the cancellation takes effect.

When the policy has been in effect for 60 days or more, or if it is a renewal with **us**, **we** may cancel this policy for one or more of the following reasons:

1) non-payment of premium;
2) the policy was obtained by misrepresentation, fraud or concealment of material facts;
3) material misrepresentation, fraud or concealment of material facts in presenting a claim, or violation of any of the policy terms; or
4) there has been a substantial change or increase in hazard in the risk **we** originally accepted.

If the cancellation is for non-payment of premium, **we** will give **you** at least 10 days notice. If the cancellation is for any of the other reasons, **we** will give **you** at least 30 days notice.

Our mailing the notice of cancellation to **you** will be deemed proof of notice. Coverage under this policy will terminate on the effective date and hour stated on the cancellation notice. **Your** return premium, if any, will be calculated on a pro rata basis and refunded at the time of cancellation or as soon as possible. However, refund of unearned premium is not a condition of cancellation.

Our Right Not to Renew or Continue:
We have the right not to renew or continue the policy beyond the current premium period. If **we** do not intend to continue or renew the policy, **we** will mail **you** notice at least 30 days before the end of the premium period. **Our** mailing the notice of nonrenewal to **you** will be deemed proof of notice.

Misrepresentation, Fraud or Concealment

We may void this policy if it was obtained by misrepresentation, fraud or concealment of material facts. If **we** determine that this policy is void, all premiums paid will be returned to **you** since there has been no coverage under this policy.

We do not cover any loss or **occurrence** in which any **insured person** has concealed or misrepresented any material fact or circumstance.

What Law Will Apply

This policy is issued in accordance with the laws of the state in which the **residence premises** is located and covers property or risks principally located in that state. Subject to the following paragraph, the laws of the state in which the **residence premises** is located shall govern any and all claims or disputes in any way related to this policy.

If a covered loss to property, or any other **occurrence** for which coverage applies under this policy happens outside the state in which the **residence premises** is located, claims or disputes regarding that covered loss to property, or any other covered **occurrence** may be governed by the laws of the jurisdiction in which that covered loss to property, or other covered **occurrence** happened, only if the laws of that jurisdiction would apply in the absence of a contractual choice of law provision such as this.

Where Lawsuits May Be Brought

Subject to the following two paragraphs, any and all lawsuits in any way related to this policy, shall be brought, heard and decided only in a state or federal court located in the state in which the **residence premises** is located. Any and all lawsuits against persons not parties to this policy but involved in the sale, administration, performance, or alleged breach of this policy, or otherwise related to this policy, shall be brought, heard and decided only in a state or federal court located in the state in which the **residence premises** is located, provided that such persons are subject to or consent to suit in the courts specified in this paragraph.

If a covered loss to property, or any other **occurrence** for which coverage applies under this policy happens outside the state in which the **residence premises** is located, lawsuits regarding that covered loss to property, or any other covered **occurrence** may also be brought in the judicial district where that covered loss to property, or any other covered **occurrence** happened.

Nothing in this provision, **Where Lawsuits May Be Brought**, shall impair any party's right to remove a state court lawsuit to a federal court.

Action Against Us

No one may bring an action against **us** unless there has been full compliance with all policy terms.

Any action against **us** to which neither the **Action Against Us** provision located in **Section I Conditions** nor the **Action Against Us** provision located in **Section II Conditions** applies must be commenced within one year of the date the cause of action accrues.

If an action is brought asserting claims relating to the existence or amount of coverage, or the amount of loss for which coverage is sought, under different coverages of this policy, the claims relating to each coverage shall be treated as if they were separate actions for the purpose of the time limit to commence action.

Arbitration

Any claim or dispute in any way related to this policy, by an **insured person** against **us** or **us** against an **insured person**, may be resolved by arbitration only upon mutual consent of the parties. Arbitration pursuant to this provision shall be subject to the following:

a) no arbitrator shall have the authority to award punitive damages or attorney's fees;
b) neither of the parties shall be entitled to arbitrate any claims or disputes in a representative capacity or as a member of a class; and
c) no arbitrator shall have the authority, without the mutual consent of the parties, to consolidate claims or disputes in arbitration.

Section I – Your Property

Coverage A
Dwelling Protection

Property We Cover Under Coverage A:

1. **Your dwelling** including attached structures. Structures connected to **your dwelling** by only a fence, utility line, or similar connection are not considered attached structures.
2. Construction materials and supplies at the **residence premises** for use in connection with **your dwelling**.
3. Wall-to-wall carpeting fastened to **your dwelling**.

Property We Do Not Cover Under Coverage A:

1. Any structure including fences or other property covered under **Coverage B – Other Structures Protection**.
2. Land.
3. Satellite dish antennas and their systems, whether or not attached to **your dwelling**.

Coverage B
Other Structures Protection

Property We Cover Under Coverage B:

1. Structures at the address shown on the Policy Declarations separated from **your dwelling** by clear space.
2. Structures connected to **your dwelling** by only a fence, utility line, or similar connection.
3. Construction materials and supplies at the address of the **residence premises** for use in connection with structures other than **your dwelling**.

4. Wall-to-wall carpeting fastened to **building structures** on the **residence premises** other than **your dwelling**.

Property We Do Not Cover Under Coverage B:

1. Structures used in whole or in part for **business** purposes.
2. Any structure or other property covered under **Coverage A—Dwelling Protection**.
3. Land.
4. Construction materials and supplies at the address of the **residence premises** for use in connection with the **dwelling**.
5. Satellite dish antennas and their systems, whether or not attached to **building structures**.

Losses We Cover Under Coverages A and B:

We will cover sudden and accidental direct physical loss to property described in **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection** except as limited or excluded in this policy.

Coverage C Personal Property Protection

Property We Cover Under Coverage C:

1. Personal property owned or used by an **insured person** anywhere in the world. When personal property is located away from the **residence premises**, coverage is limited to 10% of **Coverage C—Personal Property Protection**.
2. At **your** option, personal property owned by a guest or **residence employee** while the property is in a residence **you** are occupying.

Limitations On Certain Personal Property:

Limitations apply to the following groups of personal property. If personal property can reasonably be considered a part of two or more of the groups listed below, the lowest limit will apply. These limitations do not increase the amount of insurance under **Coverage C—Personal Property Protection**. The total amount of coverage for each group in any one loss is as follows:

1. $50— Money, bullion, bank notes, coins and other numismatic property, scrip, stored value cards and smart cards.
2. $200— Property used or intended for use in a **business** while the property is away from the **residence premises**. This does not include electronic data processing equipment or the recording or storage media used with that equipment.
3. $250— Theft of any recording or storage media while such property is away from the **residence premises**, whether or not it is used with electronic data processing equipment or in a **business**. Recording or storage media includes, but is not limited to:
   a) tapes;
   b) CDs, DVDs and other discs;
   c) records;
   d) disks;
   e) reels;
   f) cassettes;
   g) cartridges; or
   h) programs.
4. $500— Theft of tools and their accessories.
5. $1,000— Theft of jewelry, watches, precious and semi-precious stones, gold other than goldware, silver other than silverware, pewter other than pewterware, platinum other than platinumware and furs, including any item containing fur which represents its principal value.
6. $1,000— Property used or intended for use in a **business**, including property held as samples or for sale or delivery after sale, while the property is on the **residence premises**. This does not

include electronic data processing equipment or the recording or storage media used with that equipment.

7. $1,000— Trading cards, subject to a maximum amount of $250 per card.

8. $1,000— Accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, checks, cashier's checks, traveler's checks, passports, securities, tickets, and stamps, including philatelic property.

9. $1,000— Manuscripts, including documents stored on electronic media.

10. $1,000— Watercraft, including their attached or unattached trailers, furnishings, equipment, parts, and motors.

11. $1,000— Trailers not used with watercraft.

12. $1,000— Any motorized land vehicle parts, equipment or accessories not attached to or located in or upon any motorized land vehicle.

13. $1,500— Electronic data processing equipment and the recording or storage media used with that equipment whether or not the equipment is used in a **business**. Recording or storage media will be covered only up to:
    a) the retail value of the media, if pre-programmed; or
    b) the retail value of the media in blank or unexposed form, if blank or self-programmed.

14. $2,000— Theft of firearms, their related equipment, and accessories.

15. $2,500— Motorized land vehicles used solely for the service of the **insured premises** and not licensed for use on public roads. This does not include motorized land vehicles designed for assisting the disabled.

16. $2,500— Theft of goldware, silverware, pewterware and platinumware.

Property We Do Not Cover Under Coverage C:

1. Personal property specifically described and insured by this or any other insurance.

2. Animals.

3. Motorized land vehicles, including, but not limited to, any land vehicle powered or assisted by a motor or engine. **We** do not cover any motorized land vehicle parts, equipment or accessories attached to or located in or upon any motorized land vehicle. **We** do cover motorized land vehicles designed for assisting the disabled or used solely for the service of the **insured premises** and not licensed for use on public roads subject to **Limitations On Certain Personal Property**, item 15.

4. Aircraft and aircraft parts. This does not include model or hobby craft not designed to carry people or cargo.

5. Property of roomers, boarders, or tenants not related to **you**.

6. Property located away from the **residence premises** and rented or held for rental to others.

7. Satellite dish antennas and their systems.

Losses We Cover Under Coverage C:

We will cover sudden and accidental direct physical loss to the property described in **Coverage C— Personal Property Protection**, except as limited or excluded in this policy, caused by:

1. Fire or Lightning.

2. Windstorm or Hail.

   We do not cover:
   a) loss to covered property inside a **building structure**, caused by rain, snow, sleet, sand or dust unless the wind or hail first damages the roof or walls and the wind

forces rain, snow, sleet, sand or dust through the damaged roof or wall;

b) loss to watercraft and their trailers, furnishings, equipment and motors unless inside a fully enclosed **building structure**. However, **we** do cover canoes and rowboats on the **residence premises**.

3. Explosion.

4. Riot or Civil Commotion, including pillage and looting during, and at the site of, the riot or civil commotion.

5. Aircraft, including self-propelled missiles and spacecraft.

6. Vehicles.

7. Smoke.

   We do not cover loss caused by smoke from the manufacturing of controlled substances, agricultural smudging or industrial operations.

8. Vandalism and Malicious Mischief.

   We do not cover vandalism or malicious mischief if **your dwelling** has been vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

9. Falling objects.

   We do not cover loss to personal property inside a **building structure** unless the falling object first damages the exterior walls or roof of the **building structure**.

10. Weight of ice, snow or sleet which causes damage to personal property in a **building structure**, but only if the **building structure** is damaged due to the weight of ice, snow or sleet.

11. Increase or decrease of artificially generated electrical current to electronics, electrical appliances, fixtures and wiring.

12. Bulging, burning, cracking or rupture of a steam or hot water heating system, an air conditioning system, an automatic fire protection system or an appliance for heating water.

13. Water or steam that escapes from a plumbing, heating or air conditioning system, an automatic fire protection system, or from a household appliance due to accidental discharge or overflow.

    We do not cover loss to the system or appliance from which the water or steam escapes, or loss from water which backs up through sewers or drains or overflows from a sump pump, sump pump well or other system designed for the removal of subsurface water which is drained from a foundation area of a structure.

14. Freezing of a plumbing, heating or air conditioning system or a household appliance.

    We do not cover loss at the **residence premises** under perils 12), 13), and 14) caused by or resulting from freezing while the **building structure** is vacant, unoccupied or under construction unless **you** have used reasonable care to:

    a) maintain heat in the **building structure**; or
    b) shut off the water supply and drain the water from the systems and appliances.

15. Theft, or attempted theft, including disappearance of property from a known place when it is likely that a theft has occurred. Any theft must be promptly reported to the police.

    We do not cover:

    a) theft or attempted theft committed by an **insured person**;
    b) theft in or from the **residence premises** while under construction or of materials and supplies for use in construction, until the **dwelling** is completed and occupied;

c) theft of any property while at any other residence owned, rented to or occupied by an **insured person** unless the **insured person** is temporarily residing there;
d) theft of trailers, campers, watercraft, including furnishings, equipment and outboard motors, away from the **residence premises**;
e) theft from that part of the **residence premises** rented by **you** to other than an **insured person**.

16. Breakage of glass, meaning damage to covered personal property caused by breakage of glass constituting a part of any **building structure** on the **residence premises**. This does not include damage to the glass.

Additional Protection

1. **Additional Living Expense**
   a) **We** will pay the reasonable increase in living expenses necessary to maintain **your** normal standard of living when a direct physical loss **we** cover under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** makes **your residence premises** uninhabitable. However, additional living expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

      Payment for additional living expense as a result of a covered loss under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** will be limited to the least of the following:
      1) the time period required to repair or replace the property **we** cover, using due diligence and dispatch; or
      2) if **you** permanently relocate, the shortest time for **your** household to settle elsewhere; or
      3) 12 months.

      Additional Living Expense will not exceed the amount indicated on **your** Policy Declarations.

   b) **We** will pay the reasonable and necessary increase in living expenses for up to two weeks should civil authorities prohibit the use of the **residence premises** due to a loss at a neighboring premises caused by a loss **we** insure against. However, payments for increase in living expenses due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

   These periods of time are not limited by the termination of this policy.

   We do not cover any lost income or expense due to the cancellation of a lease or agreement.

   No deductible applies to this protection.

2. **Credit Card, Debit Card or Automated Teller Machine Card, Bank Fund Transfer Card, Check Forgery and Counterfeit Money**
   We will pay for loss:
   a) that an **insured person** is legally required to pay for the unauthorized use of any
      1) credit card;
      2) debit or automated teller machine card;
      3) bank fund transfer card;
      4) code;
      5) account number;
      6) personal identification number; or
      7) other means of account access

      that can be used, alone or in conjunction with items 1) through 7) above, to obtain money, goods, services, or any other thing

of value, or that can be used to initiate a transfer of funds.

b) caused by forgery or alteration of a check or negotiable instrument made or drawn upon an **insured person's** account;

c) to an **insured person** through acceptance in good faith of counterfeit United States or Canadian paper currency.

Our maximum limit of liability for any one loss is $1,000, regardless of the number of persons involved. All loss due to forgery or unauthorized use by or involving any one person is considered one loss.

We do not cover:

a) loss arising from any **business** of an **insured person**;

b) loss caused by or at the direction of an **insured person** or any other person who has been entrusted with any credit card, debit or automated teller machine card, or bank fund transfer card;

c) loss arising out of dishonesty of an **insured person**.

When loss is discovered, the **insured person** must give **us** immediate notice. If the loss involves a credit card, debit or automated teller machine card, or bank fund transfer card, the **insured person** must also give immediate notice to the company or bank that issued the card. Failure to comply with the terms and conditions of the card voids this protection.

We will pay only for loss occurring during the policy period, including those losses discovered and reported to **us** within one year after the policy has terminated. **We** have the right to investigate and settle any claim or suit as **we** deem appropriate. Full payment of the amount of insurance for any one loss ends **our** obligation under each claim or suit arising from the loss.

When this coverage applies, **we** will defend any suit brought against an **insured person** for the enforcement of payment that an **insured person** is legally required to make as a result of the unauthorized use of any credit card, debit or automated teller machine card, or bank fund transfer card issued to or registered in the name of an **insured person**. The defense will be at **our** expense, with counsel of **our** choice.

When this coverage applies, **we** have the option to defend an **insured person** or the **insured person's** bank against a suit for the enforcement of payment legally required to be made as a result of forgery or alteration of a check or negotiable instrument made or drawn upon an **insured person's** account. The defense will be at **our** expense, with counsel of **our** choice.

No deductible applies to this protection.

3. **Debris Removal**
We will pay reasonable expenses **you** incur to remove debris of covered property damaged by a loss **we** cover. If the loss to the covered property and the cost of debris removal are more than the Limit Of Liability shown on the Policy Declarations for the covered property, **we** will pay up to an additional 5% of that limit for debris removal.

4. **Emergency Removal Of Property**
We will pay for sudden and accidental direct physical loss to covered property from any cause while removed from a premises because of danger from a loss **we** cover. Protection is limited to a 30-day period from date of removal. This protection does not increase the limit of liability that applies to the covered property.

5. **Fire Department Charges**
We will pay up to $500 for service charges made by fire departments called to protect **your** property from a loss **we** cover at the **residence premises**. No deductible applies to this protection.

6. **Temporary Repairs After A Loss**
We will reimburse **you** up to $5,000 for the reasonable and necessary cost **you** incur for temporary repairs to protect covered property from further imminent covered loss following a loss **we** cover. This coverage does not increase

the limit of liability applying to the property being repaired.

7. **Trees, Shrubs, Plants and Lawns**
We will pay up to 5% of the Limit Of Liability shown on the Policy Declarations under **Coverage A—Dwelling Protection** for loss to trees, shrubs, plants and lawns at the address of the **residence premises. We** will not pay more than $500 for any one tree, shrub, or plant including expenses incurred for removing debris. This coverage applies only to direct physical loss caused by fire or lightning, explosion, riot or civil commotion, aircraft, vehicles not owned by an occupant of the **residence premises**, vandalism or malicious mischief, theft or collapse of a **building structure** or any part of a **building structure**.

We will pay up to $500 for reasonable expenses **you** incur for the removal of debris of trees at the address of the **residence premises** for direct physical loss caused by windstorm, hail, or weight of ice, snow or sleet. The fallen tree must have caused damage to property covered under **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection.**

We do not cover trees, shrubs, plants, or lawns grown for **business** purposes.

This coverage does not increase the limit of liability applying to the damaged property.

8. **Temperature Change**
We will pay for loss to covered personal property in a **building structure** at the **residence premises** resulting from a change in temperature. The change in temperature must result from a covered loss to the **building structure.**

This coverage does not increase the limit of liability applying to the damaged property.

9. **Power Interruption**
We will pay up to $500 for loss to the contents of freezers and refrigerated units on the **residence premises** caused by the interruption of power which occurs off the **residence premises.** If a power interruption is known to an **insured person**, all reasonable means must be used to protect the contents of freezers and refrigerated units.

This coverage does not increase the limit of liability applying to the damaged property.

10. **Arson Reward**
We will pay up to $5,000 for information leading to an arson conviction in connection with a fire loss to property covered under **Section I** of this policy. The $5,000 limit applies regardless of the number of persons providing information.

11. **Collapse**
We will cover at the **residence premises**:
   a) the entire collapse of a covered **building structure;**
   b) the entire collapse of part of a covered **building structure;** and
   c) direct physical loss to covered property caused by a) or b) above.

   For coverage to apply, the collapse of a **building structure** specified in a) or b) above must be a sudden and accidental direct physical loss caused by one or more of the following:
   a) a loss **we** cover under **Section I, Coverage C—Personal Property Protection;**
   b) weight of persons, animals, equipment or contents;
   c) weight of rain, snow or ice which collects on a roof;
   d) defective methods or materials used in construction, repair, remodeling or renovation, but only if the collapse occurs in the course of such construction, repair, remodeling or renovation.

   Collapse as referenced herein means the covered **building structure** or part of the covered **building structure** has actually fallen down or fallen into pieces unexpectedly and

Instantaneously. It does not include settling, cracking, shrinking, bulging, expansion, sagging, or bowing. Furthermore, collapse does not include or mean substantial structural impairment or imminent collapse.

Loss to an awning, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, fuel oil tank, septic tank, cistern or similar system, foundation, retaining wall, bulkhead, pier, wharf or dock is not included, unless the loss is a direct result of the collapse of a **building structure** or part of a **building structure** that is a sudden and accidental direct physical loss caused by one or more of the following:

a) a loss **we** cover under **Section I, Coverage C—Personal Property Protection;**
b) weight of persons, animals, equipment or contents; weight of rain, snow or ice which collects on a roof;
c) defective methods or materials used in construction, repair, remodeling or renovation, but only if the collapse occurs in the course of such construction, repair, remodeling or renovation.

This coverage does not increase the limit of liability applying to the covered property.

12. **Land**
If a sudden and accidental direct physical loss results in both a covered loss to the **dwelling**, other than the breakage of glass or safety glazing material, and a loss of land stability, **we** will pay up to $10,000 as an additional amount of insurance for repair costs associated with the land. This includes the costs required to replace, rebuild, stabilize or otherwise restore the land necessary to support that part of the **dwelling** sustaining the covered loss.

The **Section I—Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C** reference to earth movement does not apply to the loss of land stability provided under this Additional Protection.

13. **Lock Replacement**
When a key to a lock is stolen as part of a covered theft loss, **we** will pay under **Coverage A—Dwelling Protection** the reasonable expenses **you** incur to replace or re-key exterior door locks at the **residence premises** with locks or cylinders of like kind and quality. The limit of liability under this coverage following any one theft loss is $500.

This coverage does not increase the limit of liability that applies to the covered property.

Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C

A. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection** consisting of or caused by the following:

1. Freezing of:
   a) plumbing, fire protective sprinkler systems, heating or air conditioning systems;
   b) household appliances; or
   c) swimming pools, hot tubs and spas within the **dwelling**, their filtration and circulation systems;

   or discharge, leakage or overflow from within a), b) or c) above, caused by freezing, while the **building structure** is vacant, unoccupied or being constructed unless **you** have used reasonable care to:
   a) maintain heat in the **building structure**; or
   b) shut off the water supply and drain the system and appliances.

2. Freezing, thawing, pressure or weight of water, snow or ice, whether driven by wind or not. This exclusion applies to fences, pavements, patios, foundations, retaining walls, bulkheads, piers, wharves and docks. This exclusion also applies to swimming pools, hot tubs, spas, their filtration and circulation systems if the swimming pool, hot tub or spa is not located within a heated portion of the **dwelling**.

3. Seepage, meaning continuous or repeated seepage or leakage over a period of weeks, months, or years, of water, steam or fuel:
   a) from a plumbing, heating, air conditioning or automatic fire protection system or from within a domestic appliance; or
   b) from, within or around any plumbing fixtures, including, but not limited to shower stalls, shower baths, tub installations, sinks or other fixtures designed for the use of water or steam.

4. Collapse, except as specifically provided in **Section I—Additional Protection** under item 11, "Collapse."

5. Theft from **your residence premises** while **your dwelling** is under construction, or of materials and supplies for use in construction, until **your dwelling** is completed and occupied.

6. Vandalism or Malicious Mischief if **your dwelling** is vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

7. a) wear and tear, aging, marring, scratching, deterioration, inherent vice, or latent defect;
   b) mechanical breakdown;
   c) growth of trees, shrubs, plants or lawns whether or not such growth is above or below the surface of the ground;
   d) rust or other corrosion;
   e) contamination, including, but not limited to, the presence of toxic, noxious or hazardous gasses, chemicals, liquids, solids or other substances at the **residence premises** or in the air, land or water serving the **residence premises**;
   f) smog, smoke from the manufacturing of any controlled substance, agricultural smudging and industrial operations;
   g) settling, cracking, shrinking, bulging or expansion of pavements, patios, foundations, walls, floors, roofs or ceilings;
   h) insects, rodents, birds or domestic animals. **We** do cover the breakage of glass or safety glazing materials caused by birds; or
   i) seizure by government authority.

   If any of a) through h) cause the sudden and accidental escape of water or steam from a plumbing, heating or air conditioning system, household appliance or fire protective sprinkler system within **your dwelling**, **we** cover the direct physical damage caused by the water or steam. If loss to covered property is caused by water or steam not otherwise excluded, **we** will cover the cost of tearing out and replacing any part of **your dwelling** necessary to repair the system or appliance. This does not include damage to the defective system or appliance from which the water escaped.

8. Soil conditions, including, but not limited to, corrosive action, chemicals, compounds, elements, suspensions, crystal formations or gels in the soil.

B. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection** when:
   1) there are two or more causes of loss to the covered property; and
   2) the predominant cause(s) of loss is (are) excluded under items A.1 through A.8 above.

C. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** consisting of or caused by the following:

1. Flood, including, but not limited to, surface water, waves, tidal water or overflow of any body of water, or spray from any of these, whether or not driven by wind.

2. Water or any other substance that:
   a) backs up through sewers or drains; or
   b) overflows from a sump pump, sump pump well or other system designed for the removal of subsurface water which is drained from a foundation area of a structure.

3. Water or any other substance on or below the surface of the ground, regardless of its source. This includes water or any other substance which exerts pressure on, or flows, seeps or leaks through any part of the **residence premises**.

   We do cover sudden and accidental direct physical loss caused by fire, explosion or theft resulting from items 1 through 3 listed above.

4. Earth movement of any type, including, but not limited to, earthquake, volcanic eruption, lava flow, landslide, subsidence, mudflow, pressure, sinkhole, erosion, or the sinking, rising, shifting, creeping, expanding, bulging, cracking, settling or contracting of the earth. This exclusion applies whether or not the earth movement is combined with water.

   We do cover sudden and accidental direct physical loss caused by fire, explosion, theft or breakage of glass or safety glazing materials resulting from earth movement.

5. Enforcement of any building codes, ordinances or laws regulating the construction, reconstruction, maintenance, repair, placement or demolition of any **building structure**, other structure or land at the **residence premises**.

   We do cover sudden and accidental direct physical loss to covered property caused by actions of civil authority to prevent the spread of fire.

6. The failure by any **insured person** to take all reasonable steps to save and preserve property when the property is endangered by a cause of loss **we** cover.

7. Any substantial change or increase in hazard, if changed or increased by any means within the control or knowledge of an **insured person**.

8. Intentional or criminal acts of or at the direction of any **insured person**, if the loss that occurs:
   a) may be reasonably expected to result from such acts; or
   b) is the intended result of such acts.

   This exclusion applies regardless of whether or not the **insured person** is actually charged with, or convicted of, a crime.

9. Weather Conditions that contribute in any way with a cause of loss excluded under **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C** to produce a loss.

10. Planning, Construction or Maintenance, meaning faulty, inadequate or defective:
    a) planning, zoning, development, surveying, siting;
    b) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
    c) materials used in repair, construction, renovation or remodeling; or
    d) maintenance

    of property whether on or off the **residence premises** by any person or organization.

11. Vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

D. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** when:
   1) there are two or more causes of loss to the covered property; and
   2) the predominant cause(s) of loss is (are) excluded under items C.1. through C.11 above.

E. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** consisting of or caused by mold, fungus, wet rot, dry rot or bacteria. This includes any loss which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.

   This exclusion applies regardless of whether mold, fungus, wet rot, dry rot or bacteria arises from any other cause of loss, including but not limited to a loss involving water, water damage or discharge, which may otherwise be covered by this policy, except as specifically provided **in Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

F. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** consisting of or caused by the following. These exclusions apply regardless of whether any other cause contributed concurrently or in any sequence to produce the loss:
   1. Nuclear action, meaning nuclear reaction, discharge, radiation or radioactive contamination, or any consequence of any of these. Loss caused by nuclear action is not considered loss by fire, explosion or smoke.

      We do cover sudden and accidental direct physical loss by fire resulting from nuclear action.

   2. War or warlike acts, including, but not limited to, insurrection, rebellion or revolution.

Section I Conditions

1. **Deductible**
   We will pay when a covered loss exceeds the applicable deductible shown on the Policy Declarations. **We** will then pay only the excess amount, unless **we** have indicated otherwise in this policy.

2. **Insurable Interest and Our Liability**
   In the event of a covered loss, **we** will not pay for more than an **insured person's** insurable interest in the property covered, nor more than the amount of coverage afforded by this policy.

3. **What You Must Do After A Loss**
   In the event of a loss to any property that may be covered by this policy, **you** must:
   a) immediately give **us** or **our** agent notice. Report any theft to the police as soon as possible. If the loss involves a credit card, debit or automated teller machine card, or bank fund transfer card, give notice to the company or bank that issued the card.
   b) protect the property from further loss. Make any reasonable repairs necessary to protect it. Keep an accurate record of any repair expenses.
   c) separate damaged from undamaged personal property. Give **us** a detailed list of the damaged, destroyed or stolen property, showing the quantity, cost, actual cash value and the amount of loss claimed.
   d) give **us** all accounting records, bills, invoices and other vouchers, or certified copies, which **we** may reasonably request to examine and permit **us** to make copies.
   e) produce receipts for any increased costs to maintain **your** standard of living while

you reside elsewhere, and records supporting any claim for loss of rental income.

f) as often as **we** reasonably require:
   1) show **us** the damaged property.
   2) at **our** request, submit to examinations under oath, separately and apart from any other person defined as **you** or **insured person** and sign a transcript of the same.
   3) produce representatives, employees, members of the **insured person's** household or others to the extent it is within the **insured person's** power to do so; and

g) within 60 days after the loss, give **us** a signed, sworn proof of the loss. This statement must include the following information:
   1) the date, time, location and cause of loss;
   2) the interest **insured persons** and others have in the property, including any encumbrances;
   3) the actual cash value and amount of loss for each item damaged, destroyed or stolen;
   4) any other insurance that may cover the loss;
   5) any changes in title, use, occupancy or possession of the property that have occurred during the policy period;
   6) at **our** request, the specifications of any damaged **building structure** or other structure; and
   7) evidence supporting any claim under the Credit Card, Debit or Automated Teller Machine Card, Bank Fund Transfer Card, Check Forgery and Counterfeit Money protection. State the cause and amount of loss.

We have no duty to provide coverage under this section if **you**, an **insured person**, or a representative of either fail to comply with items a) through g) above, and this failure to comply is prejudicial to **us**.

4. **Our Settlement Options**
In the event of a covered loss, **we** have the option to:

a) repair, rebuild or replace all or any part of the damaged, destroyed or stolen property with property of like kind and quality within a reasonable time; or
b) pay for all or any part of the damaged, destroyed or stolen property as described in Condition 5 "How We Pay For A Loss."

Within 30 days after **we** receive **your** signed, sworn proof of loss **we** will notify **you** of the option or options **we** intend to exercise.

5. **How We Pay For A Loss**
Under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection** and **Coverage C—Personal Property Protection**, payment for covered loss will be by one or more of the following methods:

a) Special Payment. At **our** option, **we** may make payment for a covered loss before **you** repair, rebuild or replace the damaged, destroyed or stolen property if:
   1) the whole amount of loss for property covered under **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection**, without deduction for depreciation, is less than $2,500 and if the property is not excluded from the Building Structure Reimbursement provision, or;
   2) the whole amount of loss for property covered under **Coverage C—Personal Property Protection**, without deduction for depreciation, is less than $2,500 and if **your** Policy Declarations shows that the Personal Property Reimbursement provision applies, and the property is not excluded from the Personal Property Reimbursement provision.

b) Actual Cash Value. If **you** do not repair or replace the damaged, destroyed or stolen property, payment will be on an actual cash value basis. This means there may be a deduction for depreciation. Payment will not exceed the Limit Of Liability shown on the Policy Declarations for the coverage that applies to the damaged,

destroyed or stolen property, regardless of the number of items involved in the loss.

You may make claim for additional payment as described in paragraph c) and paragraph d) below, if applicable, if **you** repair or replace the damaged, destroyed or stolen covered property within 180 days of the actual cash value payment.

c) Building Structure Reimbursement. Under **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection, we** will make additional payment to reimburse **you** for cost in excess of actual cash value if **you** repair, rebuild or replace damaged, destroyed or stolen covered property within 180 days of the actual cash value payment. This additional payment includes the reasonable and necessary expense for treatment or removal and disposal of contaminants, toxins or pollutants as required to complete repair or replacement of that part of a **building structure** damaged by a covered loss. This additional payment shall not include any amounts which may be paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**, and shall not be payable for any losses excluded in **Section I—Your Property**, under **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C, section E.**

Building Structure Reimbursement will not exceed the smallest of the following amounts:

1) the replacement cost of the part(s) of the **building structure(s)** for equivalent construction for similar use on the same **residence premises;**
2) the amount actually and necessarily spent to repair or replace the damaged **building structure(s)** with equivalent construction for similar use on the same **residence premises**; or
3) the Limit Of Liability applicable to the **building structure(s)** as shown on the Policy Declarations for **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection,** regardless of the number of **building structures** and structures other than **building structures** involved in the loss.

If **you** replace the damaged **building structure(s)** at an address other than shown on the Policy Declarations through construction of a new structure or purchase of an existing structure, such replacement will not increase the amount payable under Building Structure Reimbursement described above. The amount payable under Building Structure Reimbursement described above does not include the value of any land associated with the replacement structure(s).

Building Structure Reimbursement payment will be limited to the difference between any actual cash value payment made for the covered loss to **building structures** and the smallest of 1), 2) or 3) above.

Building Structure Reimbursement will not apply to:

1) property covered under **Coverage C—Personal Property Protection;**
2) property covered under **Coverage B—Other Structures Protection** that is not a **building structure;**
3) wall-to-wall carpeting, fences, awnings and outdoor antennas whether or not fastened to a **building structure**; or
4) land.

Payment under a), b), or c) above will not include any increased cost due to the enforcement of building codes, ordinances or laws regulating the construction, reconstruction,

maintenance, repair, relocation or demolition of **building structures** or other structures.

d) Personal Property Reimbursement. Under **Coverage C—Personal Property Protection, we** will make additional payment to reimburse **you** for cost in excess of actual cash value if **you** repair, rebuild or replace damaged, destroyed or stolen covered personal property or wall-to-wall carpeting within 180 days of the actual cash value payment.

Personal Property Reimbursement payment will not exceed the smallest of the following amounts:

1) the amount actually and necessarily spent to repair or replace the property with similar property of like kind and quality;
2) the cost of repair or restoration; or
3) the Limit Of Liability shown on the Policy Declarations for **Coverage C—Personal Property Protection,** or any special limit of liability described in the policy, regardless of the number of items of personal property involved in the loss.

Personal Property Reimbursement will be limited to the difference between any actual cash value payment made for the covered loss to personal property and the smallest of 1), 2) or 3) above.

Personal Property Reimbursement will not apply to:

1) property insured under **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection,** except wall-to-wall carpeting;
2) antiques, fine arts, paintings, statuary and similar articles which, by their inherent nature, cannot be replaced;
3) articles whose age or history contribute substantially to their value. This includes, but is not limited to, memorabilia, souvenirs and collector's items;
4) property that was obsolete or unusable for the originally intended purpose because of age or condition prior to the loss; or
5) motorized land vehicles used solely for the service of the **Insured premises** and not licensed for use on public roads. This does not include motorized land vehicles designed for assisting the disabled.

6. **Our Settlement Of Loss**
We will settle any covered loss with **you** unless some other person or entity is named in the policy. **We** will settle within 60 days after the amount of loss is finally determined. This amount may be determined by an agreement between **you** and **us,** an appraisal award or a court judgment.

7. **Appraisal**
If you and **we** fail to agree on the amount of loss, either party may make written demand for an appraisal. Upon such demand, each party must select a competent and impartial appraiser and notify the other of the appraiser's identity within 20 days after the demand is received. The appraisers will select a competent and impartial umpire. If the appraisers are unable to agree upon an umpire within 15 days, **you** or **we** can ask a judge of a court of record in the state where the **residence premises** is located to select an umpire.

The appraisers shall then determine the amount of loss, stating separately the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to **you** and to **us** the amount agreed upon shall be the amount of loss. If they cannot agree, they will submit their differences to the umpire. A written award agreed upon by any two will determine the amount of loss.

Each party will pay the appraiser it chooses, and equally bear expenses for the umpire and all other appraisal expenses.

8. **Abandoned Property**
We are not obligated to accept any property or responsibility for any property abandoned by an **insured person.**

9. **Permission Granted To You**
a) The **residence premises** may be vacant or unoccupied for any length of time, except where a time limit is indicated in this policy for specific perils. A **building structure** under construction is not considered vacant.
b) **You** may make alterations, additions or repairs, and **you** may complete structures under construction.

10. **Our Rights To Recover Payment**
When **we** pay for any loss, an **insured person's** right to recover from anyone else becomes **ours** up to the amount **we** have paid. An **insured person** must protect these rights and help **us** enforce them. **You** may waive **your** rights to recover against another person for loss involving the property covered by this policy. This waiver must be in writing prior to the date of the loss.

11. **Our Rights To Obtain Salvage**
We have the option to take all or any part of the damaged or destroyed covered property upon replacement by **us** or payment of the agreed or appraised value.

We will notify **you** of **our** intent to exercise this option within 30 days after **we** receive **your** signed, sworn proof of loss. If no signed, sworn proof of loss is requested by **us, we** will notify **you** of **our** intent to exercise this option within 60 days after the date **you** report the loss to **us.**

When **we** settle any loss caused by theft or disappearance, **we** have the right to obtain all or part of any property which may be recovered. An **insured person** must protect this right and inform **us** of any property recovered. **We** will inform **you** of **our** intent to exercise this right within 10 days of **your** notice of recovery to **us.**

12. **Action Against Us**
No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under a coverage to which **Section I Conditions** applies, unless:
a) there has been full compliance with all policy terms; and
b) the action is commenced within one year after the inception of loss or damage.

13. **Loss To A Pair Or Set**
If there is a covered loss to a pair or set, **we** may:
a) repair or replace any part of the pair or set to restore it to its actual cash value before the loss; or
b) pay the difference between the actual cash value of the pair or set before and after the loss.

14. **Glass Replacement**
Payment for loss to covered glass includes the cost of using safety glazing materials when required by law.

15. **No Benefit To Bailee**
This insurance will not benefit any person or organization who may be caring for or handling **your** property for a fee.

16. **Other Insurance**
If both this insurance and other insurance apply to a loss, **we** will pay the proportionate amount that this insurance bears to the total amount of all applicable insurance. However, in the event of a loss by theft, this insurance shall be excess over any other insurance that covers loss by theft.

17. **Property Insurance Adjustment**
When the Policy Declarations indicates that the Property Insurance Adjustment Condition applies, **you** agree that, at each policy anniversary, **we** may increase the Limit of Liability shown on the Policy Declarations for **Coverage A—Dwelling Protection** to reflect one of the following:
a) the rate of change in the index identified in the "Important Payment and Coverage

Information" section of the Policy Declarations. The limit of liability for **Coverage A—Dwelling Protection** for the succeeding premium period will be determined by changing the existing limit in proportion to the change in the index between the time the existing limit was established and the time the change is made. The resulting amount will be rounded to the nearest $1000; or

b) the minimum amount of insurance coverage **we** are willing to issue for the succeeding premium period under **Coverage A—Dwelling Protection** for **your dwelling** and other property **we** cover under **Coverage A—Dwelling Protection.**

Any adjustment in the limit of liability for **Coverage A—Dwelling Protection** will result in an adjustment in the limit of liability for **Coverage B—Other Structures Protection** and **Coverage C—Personal Property Protection** in accordance with **our** manual of Rules and Rates.

Any adjustment in premium resulting from the application of this condition will be made based on premium rates in use by **us** at the time a change in limits is made.

We will not reduce the limit of liability shown on the Policy Declarations without **your** consent. **You** agree that it is **your** responsibility to ensure that each of the limits of liability shown on the Policy Declarations are appropriate for **your** insurance needs. If **you** want to increase or decrease any of the limits of liability shown on the Policy Declarations, **you** must contact **us** to request such a change.

18. **Mortgagee**
A covered loss will be payable to the Mortgagee(s) named on the Policy Declarations, to the extent of their interest and in the order of precedence. All provisions of **Section I** of this policy apply to these mortgagees.

We will:

a) protect the mortgagee's interest in a covered **building structure** in the event of an increase in hazard, intentional or criminal acts of, or directed by, an **insured person**, failure by any **insured person** to take all reasonable steps to save and preserve property after a loss, a change in ownership, or foreclosure if the mortgagee has no knowledge of these conditions; and

b) give the mortgagee at least 10 days notice if **we** cancel this policy.

The mortgagee will:

a) furnish proof of loss within 60 days after notice of the loss if an **insured person** fails to do so;

b) pay upon demand any premium due if an **insured person** fails to do so;

c) notify **us** in writing of any change of ownership or occupancy or any increase in hazard of which the mortgagee has knowledge;

d) give **us** the mortgagee's right of recovery against any party liable for loss; and

e) after a loss, and at **our** option, permit **us** to satisfy the mortgage requirements and receive full transfer of the mortgage.

This mortgagee interest provision shall apply to any trustee or loss payee or other secured party.

19. **Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**
In the event of a covered water loss under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection, we** will pay up to $5,000 for mold, fungus, wet rot or dry rot **remediation.**

Remediation means the reasonable and necessary treatment, removal or disposal of mold, fungus, wet rot or dry rot as required to complete repair or replacement of property **we** cover under **Coverage A—Dwelling Protection, Coverage B—Other Structures**

Protection or **Coverage C—Personal Property Protection** damaged by a covered water loss, including payment for any reasonable increase in living expenses necessary to maintain **your** normal standard of living if mold, fungus, wet rot or dry rot makes **your residence premises** uninhabitable. **Remediation** also includes any investigation or testing to detect, measure or evaluate mold, fungus, wet rot or dry rot.

This Condition does not increase the limits of liability under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection.**

Section II– Family Liability and Guest Medical Protection

Coverage X
Family Liability Protection

Losses We Cover Under Coverage X:
Subject to the terms, conditions and limitations of this policy, **we** will pay damages which an **insured person** becomes legally obligated to pay because of **bodily injury** or **property damage** arising from an **occurrence** to which this policy applies, and is covered by this part of the policy.

We may investigate or settle any claim or suit for covered damages against an **insured person.** If an **insured person** is sued for these damages, **we** will provide a defense with counsel of **our** choice, even if the allegations are groundless, false or fraudulent. **We** are not obligated to defend any suit or pay any claim or judgment after **we** have exhausted **our** limit of liability.

Coverage Y
Guest Medical Protection

Losses We Cover Under Coverage Y:
We will pay the reasonable expenses incurred for necessary medical, surgical, x-ray and dental services; ambulance, hospital, licensed nursing and funeral services; and prosthetic devices, eye glasses, hearing aids, and pharmaceuticals. These expenses must be incurred and the services performed within three years from the date of an **occurrence** causing **bodily injury** to which this policy applies, and is covered by this part of the policy.

Each person who sustains **bodily injury** is entitled to this protection when that person is:
1. on the **insured premises** with the permission of an **insured person**; or
2. off the **insured premises,** if the **bodily injury**:
   a) arises out of a condition on the **insured premises** or immediately adjoining ways;
   b) is caused by the activities of an **insured person** or a **residence employee;**
   c) is caused by an animal owned by or in the care of an **insured person**; or
   d) is sustained by a **residence employee.**

Additional Protection

We will pay, in addition to the limits of liability:
1. **Claim Expense**
   We will pay:
   a) all costs **we** incur in the settlement of any claim or the defense of any suit against an **insured person**;
   b) interest accruing on damages awarded until such time as **we** have paid, formally offered, or deposited in court the amount for which **we** are liable under this policy; interest will be paid only on damages which do not exceed **our** limits of liability;
   c) premiums on bonds required in any suit **we** defend; **we** will not pay bond premiums in an amount that is more than **our** limit of liability; **we** have no obligation to apply for or furnish bonds;
   d) up to $150 per day for loss of wages and salary, when **we** ask **you** to attend trials and hearings;
   e) any other reasonable expenses incurred by an **insured person** at **our** request.

2. **Emergency First Aid**
   We will pay reasonable expenses incurred by an **insured person** for first aid to other persons at the time of an accident involving **bodily injury** covered under this policy.

3. **Damage To Property Of Others**
At **your** request, **we** will pay up to $500 each time an **insured person** causes **property damage** to someone else's property. At **our** option, **we** will pay the cost to either repair or replace the property damaged by an **insured person**, without deduction for depreciation.

We will not pay for **property damage**:
a) to property covered under **Section I** of this policy;
b) to property intentionally damaged by an **insured person** who has attained the age of 13;
c) to property owned by or rented to an **insured person**, any tenant of an **insured person**, or any resident in **your** household; or
d) arising out of:
   1) past or present **business** activities;
   2) any act or omission in connection with a premises, other than an **insured premises**, owned, rented or controlled by an **insured person**; or
   3) the ownership or use of a motorized land vehicle, trailer, aircraft, hovercraft or watercraft.

Losses We Do Not Cover Under Coverage X and Coverage Y

A. **Losses We Do Not Cover Under Coverage X:**
1. **We** do not cover **bodily injury** to an **insured person** or **property damage** to property owned by an **insured person** whenever any benefit of this coverage would accrue directly or indirectly to an **insured person**.

2. **We** do not cover any **property damage** consisting of or caused by vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

3. **We** do not cover any **bodily injury** or **property damage** arising out of any liability statutorily imposed upon any **insured person** in any manner, consisting of or caused by vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

4. **We** do not cover any liability an **insured person** assumes arising out of any contract or agreement.

5. **We** do not cover **property damage** to property rented to, occupied or used by, or in the care of, an **insured person**. This exclusion does not apply if the **property damage** is caused by fire, explosion or smoke.

6. **We** do not cover any liability imposed upon any **insured person** by any governmental authority for **bodily injury** or **property damage** which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.

B. **Losses We Do Not Cover Under Coverage Y:**
1. **We** do not cover **bodily injury** to any **insured person** or regular resident of the **insured premises**. However, this exclusion does not apply to a **residence employee**.

2. **We** do not cover **bodily injury** to any person on the **insured premises** because of a **business** activity or professional service conducted there.

C. **Losses We Do Not Cover Under Coverage X and Coverage Y:**
Coverage under **Coverage X—Family Liability Protection** will be excluded for **bodily injury** and **property damage** and coverage under **Coverage Y—Guest Medical Protection** will be excluded for **bodily injury** as follows:

1. **We** do not cover any **bodily injury** or **property damage** intended by, or which may reasonably be expected to result from the intentional or criminal acts or

omissions of, any **insured person**. This exclusion applies even if:

a) such **insured person** lacks the mental capacity to govern his or her conduct;
b) such **bodily injury** or **property damage** is of a different kind or degree than intended or reasonably expected; or
c) such **bodily injury** or **property damage** is sustained by a different person than intended or reasonably expected.

This exclusion applies regardless of whether or not such **insured person** is actually charged with, or convicted of a crime.

2. **We** do not cover **bodily injury** to any person eligible to receive benefits required to be provided or voluntarily provided by an **insured person** under any worker's compensation, non-occupational disability or occupational disease law.

3. **We** do not cover **bodily injury** or **property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of aircraft.

   This exclusion does not apply to **bodily injury** to a **residence employee**.

4. **We** do not cover **bodily injury** or **property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any motor vehicle or trailer. However, this exclusion does not apply to:
   a) a motor vehicle in dead storage or used exclusively on an **insured premises**;
   b) any motor vehicle designed principally for recreational use off public roads, unless that vehicle is owned by an **insured person** and is being used away from an **insured premises**;
   c) a motorized wheel chair;
   d) a vehicle used to service an **insured premises** which is not designed for use on public roads and not subject to motor vehicle registration;
   e) a golf cart owned by an **insured person** when used for golfing purposes;
   f) a trailer of the boat, camper, home or utility type unless it is being towed or carried by a motorized land vehicle;
   g) lawn or garden implements under 40 horsepower;
   h) **bodily injury** to a **residence employee**.

5. **We** do not cover **bodily injury** or **property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of watercraft away from an **insured premises** if the watercraft:
   a) has inboard or inboard-outboard motor power of more than 50 horsepower;
   b) is a sailing vessel 26 feet or more in length;
   c) is powered by one or more outboard motors with more than 25 total horsepower;
   d) is designated as an airboat, air cushion, or similar type of watercraft; or
   e) is a personal watercraft, meaning a craft propelled by a water jet pump engine and designed to be operated by a person or persons sitting, standing or kneeling on the craft.

   This exclusion does not apply to **bodily injury** to a **residence employee**.

6. **We** do not cover **bodily injury** or **property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of hovercrafts. This exclusion does not

apply to **bodily injury** to a **residence employee**.

7. **We** do not cover **bodily injury** or **property damage** arising out of:
   a) the negligent supervision by any **insured person** of any person; or
   b) any liability statutorily imposed on any **insured person**

   arising from the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any aircraft, watercraft, hovercraft, motorized land vehicle or trailer which is not covered under **Section II** of this policy.

8. **We** do not cover any **bodily injury** which results in any manner from the discharge, dispersal, release or escape of vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

   We do cover **bodily injury** which results from such discharge if the discharge is sudden and accidental.

9. **We** do not cover **bodily injury** or **property damage** arising out of the rendering of, or failure to render, professional services by an **insured person**.

10. **We** do not cover **bodily injury** or **property damage** arising out of the past or present **business** activities of an **insured person**.

    We do cover the occasional or part-time **business** activities of an **insured person** who is a student under 21 years of age who is self-employed and has no employees.

11. **We** do not cover **bodily injury** or **property damage** arising out of any premises, other than an **insured premises**, owned, rented or controlled by an **insured person**. This exclusion does not apply to **bodily injury** to a **residence employee**.

12. **We** do not cover **bodily injury** or **property damage** which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.

13. **We** do not cover **bodily injury** or **property damage** caused by war or warlike acts, including, but not limited to, insurrection, rebellion or revolution.

Section II Conditions

1. **What You Must Do After An Accidental Loss**
   In the event of **bodily injury** or **property damage, you** must do the following:
   a) Promptly notify **us** or **our** agent stating:
      1) **your** name and policy number;
      2) the date, the place and the circumstances of the loss;
      3) the name and address of anyone who might have a claim against an **insured person**;
      4) the names and addresses of any witnesses.
   b) Promptly send **us** any legal papers relating to the accident.
   c) At **our** request, an **insured person** will:
      1) cooperate with **us** and assist **us** in any matter concerning a claim or suit;
      2) help **us** enforce any right of recovery against any person or organization who may be liable to an **insured person**;
      3) attend any hearing or trial.
   d) Under the **Damage To Property Of Others** protection, give **us** a sworn statement of the loss. This must be made within 60 days after the date of loss. Also, an **insured person** must be prepared to show **us** any damaged property under that person's control.

   Any **insured person** will not voluntarily pay any money, assume any obligations or incur any expense, other than for first aid to others

at the time of the loss as provided for in this policy.

2. **What An Injured Person Must Do—Coverage Y—Guest Medical Protection**
   If someone is injured, that person, or someone acting for that person, must do the following:
   a) Promptly give **us** written proof of the loss. If **we** request, this must be done under oath.
   b) Give **us** written authorization to obtain copies of all medical records and reports.
   c) Permit doctors **we** select to examine the injured person as often as **we** may reasonably require.

3. **Our Payment Of Loss—Coverage Y—Guest Medical Protection**
   We may pay the injured person or the provider of the medical services. Payment under this coverage is not an admission of liability by **us** or an **insured person**.

4. **Our Limits Of Liability**
   Regardless of the number of **insured persons**, injured persons, claims, claimants or policies involved, **our** total liability under **Coverage X—Family Liability Protection** for damages resulting from one **occurrence** will not exceed the Limit Of Liability shown on the Policy Declarations. All **bodily injury** and **property damage** resulting from continuous or repeated exposure to the same general conditions is considered the result of one **occurrence. Our** total liability under **Coverage Y—Guest Medical Protection** for all medical expenses payable for **bodily injury**, to any one person, shall not exceed the "each person" Limit Of Liability shown on the Policy Declarations.

5. **Bankruptcy**
   We are not relieved of any obligation under this policy because of the bankruptcy or insolvency of an **insured person**.

6. **Our Rights to Recover Payment—Coverage X—Family Liability Protection**
   When **we** pay any loss, an **insured person's** right to recover from anyone else becomes **ours** up to the amount **we** have paid. An **insured person** must protect these rights and help **us** enforce them.

7. **Action Against Us**
   a) No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, unless there has been full compliance with all policy terms.
   b) No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under **Coverage X—Family Liability Protection**, unless the obligation of an **insured person** to pay has been finally determined either by judgment against the **insured person** after actual trial, or by written agreement of the **insured person**, injured person and **us**, and the action against **us** is commenced within one year of such judgment or agreement.
   c) No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under **Coverage Y—Guest Medical Protection**, unless such action is commenced within one year after the date the expenses for which coverage is sought were actually incurred.
   d) No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under **Section II—Additional Protection**, unless such action is commenced within one year after the date the claim expenses or emergency first aid expenses for which coverage is sought were actually incurred, or within one year after the date of loss to the property if coverage is being sought under the **Damage to Property of Others** provision.
   e) No one shall have any right to make **us** a party to an action to determine the liability of an **insured person**.

8. **Other Insurance—Coverage X—Family Liability Protection**
This insurance is excess over any other valid and collectible insurance except insurance that is written specifically as excess over the limits of liability that apply to this policy.

Section III– Optional Protection

Optional Coverages You May Buy

The following Optional Coverages may supplement coverages found in **Section I** or **Section II** and apply only when they are indicated on the Policy Declarations. The provisions of this policy apply to each Optional Coverage in this section unless modified by the terms of the specific Optional Coverage.

1. **Coverage BC**
Building Codes
We will pay up to 10% of the amount of Insurance on the Policy Declarations under **Coverage A—Dwelling Protection** to comply with local building codes after a covered loss to the **dwelling** or when repair or replacement results in increased cost due to the enforcement of any building codes, ordinances or laws regulating the construction, reconstruction, maintenance, repair or demolition of the **dwelling**.

2. **Coverage BP**
Increased Coverage On Business Property
The limitation on **business** property located on the **residence premises**, under **Coverage C—Personal Property Protection**, is increased to the amount shown on the Policy Declarations. This increased coverage includes property held as samples or for sale or delivery after sale, while the property is on the **residence premises**.

3. **Coverage DP**
Increased Coverage On Electronic Data Processing Equipment
The limitation on electronic data processing equipment under **Coverage C—Personal Property Protection**, and the recording or storage media used with that equipment, is increased to the amount shown on the Policy Declarations.

4. **Coverage F**
Fire Department Charges
The $500 limit applying to the fire department service charges under **Additional Protection** is increased to the amount shown on the Policy Declarations.

5. **Coverage G**
Loss Assessments
If **your residence premises** includes a **building structure** which is constructed in common with one or more similar buildings, and **you** are a member of, and subject to the rules of, an association governing the areas held in common by all building owners as members of the association, the **insured premises** means the **building structure** occupied exclusively by **your** household as a private residence, including the grounds, related structures and private approaches to them.

We will pay **your** share of any special assessments charged against all building owners by the association up to the Limit Of Liability shown on the Policy Declarations, when the assessment is made as a result of:
a) sudden and accidental direct physical loss to the property held in common by all building owners caused by a loss **we** cover under **Section I** of this policy; or
b) **bodily injury** or **property damage** covered under **Section II** of this policy.

Any reduction or elimination of payments for losses because of any deductible applying to the insurance coverage of the association of building owners collectively is not covered under this protection.

We will pay only when the assessment levied against the **insured person**, as a result of any one loss, for **bodily injury** or **property damage** exceeds $250 and then only for the amount of such excess. This coverage is not subject to any deductible applying to **Section I** of this policy.

In the event of an assessment, this coverage is subject to all the exclusions applicable to **Sections I** and **II** of this policy and the **Section I** and **II Conditions**, except as otherwise noted.

This coverage is excess over any insurance collectible under any policy or policies covering the association of building owners.

6. **Coverage J**
Extended Coverage On Jewelry, Watches and Furs
Coverage C—Personal Property Protection is extended to pay for sudden and accidental direct physical loss to the following property, subject to the provisions in this coverage:
a) jewelry, watches, gems, precious and semi-precious stones, gold, platinum; and
b) furs, including any item containing fur which represents its principal value.

The total amount of coverage and per item limit is shown on the Policy Declarations. This amount is not in addition to the amount of insurance applying to **Coverage C—Personal Property Protection**. However, in no event will coverage be less than would have applied in the absence of **Coverage J**.

We do not cover loss caused by or consisting of:
a) intentional or criminal acts of or at the direction of any **insured person**, if the loss that occurs:
   1) may be reasonably expected to result from such acts; or
   2) is the intended result of such acts.
b) wear and tear, gradual deterioration, inherent vice, insects or vermin;
c) nuclear action, meaning nuclear reaction, discharge, radiation or radioactive contamination or any consequence of any of these. Loss caused by nuclear action is not considered a loss by fire, explosion or smoke. **We** do cover sudden and accidental direct physical loss by fire resulting from nuclear action.
d) war or warlike acts, including, but not limited to, insurrection, rebellion or revolution.
e) failure by any **insured person** to take all reasonable steps to preserve property during and after a loss or when the property is endangered by a cause of loss **we** cover.

Any deductible shown on the Policy Declarations applicable to **Coverage C—Personal Property Protection**, also applies to a loss under this coverage.

7. **Coverage K**
Incidental Office, Private School Or Studio
a) The limits applying to property used or intended for use in a **business** under **Coverage C—Personal Property Protection** do not apply to equipment, supplies and furnishings used in a described office, private school or studio at **your residence premises.** This does not include electronic data processing equipment or the recording or storage media used with that equipment.

The **Coverage K** limits are shown on the Policy Declarations. The first limit applies to property on the **residence premises**. The second limit applies to property while away from the **residence premises**. These limits are not in addition to **Coverage C—Personal Property Protection, Limitations On Certain Personal Property** on property used or intended for use in a **business**. The increased coverage does not include property held for sample, sale or delivery after sale.

b) **Coverage X—Family Liability Protection** and **Coverage Y—Guest Medical Protection** are extended to cover a described office, private school or studio occupied by an **insured person**. The occupancy of the described property shall not be considered a **business**.

We do not cover **bodily injury** to:
a) any employee other than a **residence employee**; or

b) any person arising out of corporal punishment administered by or at the direction of an **insured person**.

8. **Coverage M**
Increased Coverage On Money
The limitation on money, bullion, bank notes, coins and other numismatic property, scrip, stored value cards and smart cards under **Coverage C—Personal Property Protection** is increased to the amount shown on the Policy Declarations.

9. **Coverage P**
Business Pursuits
Coverage X—Family Liability Protection and **Coverage Y—Guest Medical Protection** are extended to cover specified **business** pursuits of an **insured person**.

We do not cover:
a) **bodily injury** or **property damage** arising out of the **business** pursuits of an **insured person** when the **business** is owned or financially controlled by the **insured person**. This also means a partnership or joint venture of which an **insured person** is a partner or member;
b) **bodily injury** or **property damage** arising out of the rendering of or failure to render a professional service of any nature, other than teaching;
c) **bodily injury** to a fellow employee of an **insured person** arising out of and in the course of employment;
d) **bodily injury** or **property damage** when an **insured person** is a member of a teaching staff or faculty of any school or college and the **bodily injury** or **property damage** arises out of the maintenance or use of saddle animals, vehicles used with saddle animals, motorized land vehicles, hovercrafts, aircraft or watercraft when owned, hired or operated by an **insured person** or used for the purpose of instruction; or
e) **bodily injury** to any person arising out of corporal punishment administered by or at the direction of an **insured person** when an **insured person** is a member of the teaching staff or faculty of any school of instruction.

10. **Coverage S**
Increased Coverage On Securities
The $1,000 limitation on accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, checks, cashier's checks, traveler's checks, passports, securities, tickets, and stamps, including philatelic property, covered under **Coverage C—Personal Property Protection**, is increased to the amount shown on the Policy Declarations.

11. **Coverage SD**
Satellite Dish Antennas
Coverage C—Personal Property Protection is extended to pay for sudden and accidental direct physical loss to satellite dish antennas and their systems on **your residence premises**, subject to the provisions of **Coverage C—Personal Property Protection**.

The amount of coverage is shown on the Policy Declarations.

12. **Coverage ST**
Increased Coverage On Theft Of Silverware
The limitation on theft of goldware, silverware, pewterware and platinumware under **Coverage C—Personal Property Protection** is increased to the amount shown on the Policy Declarations.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Extended Protection
Amendatory Endorsement – APC270

I. In **Section I – Your Property, Coverage C – Personal Property Protection** is revised as follows:

A. In **Property We Cover Under Coverage C**, item 1. is replaced by the following:

1. Personal property owned or used by an **insured person** anywhere in the world. When personal property is located at a residence other than the **residence premises**, coverage is limited to 10% of **Coverage C – Personal Property Protection**. This limitation does not apply to personal property in a newly acquired principal residence for the 30 days immediately after **you** begin to move property there, personal property in use at a temporary residence when a direct physical loss **we** cover makes **your residence premises** uninhabitable, or to personal property in student dormitory, fraternity or sorority housing.

B. The **Limitations On Certain Personal Property** provision is replaced by the following:

Limitations On Certain Personal Property:
Limitations apply to the following groups of personal property. If personal property can reasonably be considered a part of two or more of the groups listed below, the lowest limit will apply. These limitations do not increase the amount of insurance under **Coverage C – Personal Property Protection**. The total amount of coverage for each group in any one loss is as follows:

1. $200 – Money, bullion, bank notes, coins and other numismatic property, scrip, stored value cards and smart cards.

2. $200 – Property used or intended for use in a **business** while the property is away from the **residence premises**. This does not include electronic data processing equipment or the recording or storage media used with that equipment.

3. $500 – Theft of any recording or storage media while such property is away from the **residence premises**, whether or not it is used with electronic data processing equipment or in a **business**. Recording or storage media includes, but is not limited to:
   a) tapes;
   b) CDs, DVDs and other discs;
   c) records;
   d) disks;
   e) reels;
   f) cassettes;
   g) cartridges; or
   h) programs.

4. $1,000— Trading cards, subject to a maximum amount of $250 per card.

5. $1,000— Accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, checks, cashier's checks, traveler's checks, passports, securities, tickets, and stamps, including philatelic property.

6. $1,000— Manuscripts, including documents stored on electronic media.

7. $1,000— Trailers not used with watercraft.

8. $2,000— Watercraft, including their attached or unattached trailers, furnishings, equipment, parts, and motors.

9. $2,000— Property used or intended for use in a **business**, including property held as samples or for sale or delivery after sale, while the property is on the **residence premises**. This does not include electronic data processing equipment or the recording or storage media used with that equipment.

10. $2,000— Any motorized land vehicle parts, equipment or accessories not attached to or located in or upon any motorized land vehicle.

11. $10,000— Motorized land vehicles used solely for the service of the **insured premises** and not licensed for use on public roads. This does not include motorized land vehicles designed for assisting the disabled.

12. $3,000— Theft of firearms, their related equipment, and accessories.

13. $5,000— Theft of jewelry, watches, precious and semi-precious stones, gold other than goldware, silver other than silverware, pewter other than pewterware, platinum other than platinumware and furs, including any item containing fur which represents its principal value, subject to a maximum amount of $1,000 per item.

14. $2,500— Theft of goldware, silverware, pewterware and platinumware.

15. $10,000— Theft of tools and their accessories.

II. In **Section I—Your Property, Additional Protection** is revised as follows:

A. Item 1. **Additional Living Expense** is replaced by the following:

1. **Additional Living Expense**
   a) **We** will pay the reasonable increase in living expenses necessary to maintain **your** normal standard of living when a direct physical loss **we** cover under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** makes **your residence premises** uninhabitable. However, additional living expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

Payment for additional living expense as a result of a covered loss under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** will be limited to the least of the following:

1) the time period required to repair or replace the property **we** cover, using due diligence and dispatch; or
2) if **you** permanently relocate, the shortest time for **your** household to settle elsewhere; or
3) 12 months.

b) **We** will pay the reasonable and necessary increase in living expenses for up to two weeks should civil authorities prohibit the use of the **residence premises** due to a loss at a neighboring premises caused by a loss **we** insure against. However, payments for increase in living expenses due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

These periods of time are not limited by the termination of this policy.

We do not cover any lost income or expense due to the cancellation of a lease or agreement.

No deductible applies to this protection.

B. Item 9. **Power Interruption** is replaced by the following:

9. **Power Interruption**
We will pay for loss to the contents of freezers and refrigerated units on the **residence premises** caused by the interruption of power which occurs off the **residence premises**. If a power interruption is known to an **insured person**, all reasonable means must be used to protect the contents of freezers and refrigerated units.

This coverage does not increase the limit of liability applying to the damaged property.

III. **Building Structure Reimbursement Extended Limits**
In **Section I—Conditions**, item 5., **How We Pay For A Loss**, under c) Building Structure Reimbursement **we** will replace item 3) if, at the time of the loss, **you** have met the following conditions:

A. Insure **your dwelling**, attached structures and detached **building structures** to 100% of replacement cost as determined by **our** estimate completed and based on the accuracy of information **you** furnished;

B. Have accepted the Property Insurance Adjustment Condition, agree to accept each annual adjustment in the **Coverage A—Dwelling Protection** limit of liability, and pay any additional premium charged; and

C. Notify **us** within 60 days of the start of any modifications that increase the aggregate value of **your dwelling**, attached structures and detached **building structures** at the **residence premises** by $5,000 or more, and pay any resulting additional premium due for the increase in value.

If, at the time of a covered loss, **you** meet all of the conditions in A., B., and C. above, then in **Section I—Conditions**, item 5., **How We Pay For A Loss**, under c) Building Structure Reimbursement, item 3) is replaced with:

3) 120% of the Limit Of Liability applicable to the **building structure(s)** as shown on the Policy Declarations for **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection**, regardless of the number of **building structures** and structures other than **building structures** involved in the loss.

If, at the time of a covered loss, **you** fail to meet any of the conditions in A., B., and C. above, then in **Section I—Conditions**, item 5., **How We Pay For A Loss**, under c) Building Structure Reimbursement, Item 3) remains:

3) the Limit Of Liability applicable to the **building structure(s)** as shown on the Policy Declarations for **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection**, regardless of the number of **building structures** and structures other than **building structures** involved in the loss.

IV. In **Section II—Family Liability and Guest Medical Protection**, under **Additional Protection**, item 3 is replaced by the following:

3. **Damage To Property Of Others**
At **your** request, **we** will pay up to $1,000 each time an **insured person** causes **property damage** to someone else's property. At **our** option, **we** will pay the cost to either repair or replace the property damaged by an **insured person**, without deduction for depreciation.

We will not pay for **property damage**:
a) to property covered under **Section I** of this policy;
b) to property intentionally damaged by an **insured person** who has attained the age of 13;
c) to property owned by or rented to an **insured person**, any tenant of an **insured person**, or any resident in **your** household; or
d) arising out of:
   1) past or present **business** activities;
   2) any act or omission in connection with a premises, other than an **insured premises**, owned, rented or controlled by an **insured person**; or
   3) the ownership or use of a motorized land vehicle, trailer, aircraft, hovercraft or watercraft.

All other policy terms and conditions apply.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Scheduled Personal Property Endorsement – APC273

WHERE COVERAGE APPLIES

WE will cover the described property anywhere in the world. HOWEVER, COVERAGE ON FINE ARTS, FIREARMS AND BUSINESS PERSONAL PROPERTY IS LIMITED TO WITHIN THE UNITED STATES OF AMERICA AND CANADA.

SPECIAL PROVISIONS AND CONDITIONS:

1. Musical Instruments: **YOU** agree that none of the musical instruments covered will be played for remuneration unless this is indicated in the schedule and an additional premium paid.

2. Silverware: This classification includes silverware, silver-platedware, goldware, gold-platedware and pewterware. IT DOES NOT INCLUDE PENS, PENCILS, FLASKS, SMOKING IMPLEMENTS OR ACCESSORIES, OR ITEMS OF JEWELRY.

3. Fine Arts: **YOU** agree that covered fine arts will be packed and unpacked by competent packers.

4. Golfer's Equipment: Coverage on golfer's equipment owned by an **INSURED PERSON** includes golf clubs, golf clothing and equipment, BUT DOES NOT INCLUDE JEWELRY, WATCHES AND EQUIPMENT FOR SALE. Coverage also applies to **YOUR** other clothing while contained in any locker at the premises where **YOU** are playing golf. GOLF BALLS ARE COVERED ONLY FOR LOSS BY FIRE OR BY BURGLARY PROVIDED, IN THE CASE OF BURGLARY, THERE ARE VISIBLE MARKS OF FORCIBLE ENTRY INTO THE BUILDING, ROOM OR LOCKER CONTAINING THE GOLF BALLS.

5. Stamp and Coin Collections: Coverage on postage stamps includes due, envelope, official, revenue, match and medicine stamps, covers, locals, reprints, essays, proofs and other philatelic property an **INSURED PERSON** owns or controls. This includes the books, pages and mountings.

   Coverage on rare and current coins includes medals, paper money, bank notes, tokens or money and other numismatic property an **INSURED PERSON** owns or controls. This includes albums, containers, frames, cards, and display cabinets used with the coin collections.

6. Business Personal Property: This classification includes hand tools and portable power tools owned by an **INSURED PERSON** and used in that person's **BUSINESS. WE** WILL NOT COVER THE FOLLOWING PROPERTY:
   (A) SPARE PARTS, UNLESS ATTACHED TO THE COVERED PROPERTY OR SPECIFICALLY DESCRIBED IN THIS ENDORSEMENT;
   (B) ELECTRICAL APPLIANCES OR DEVICES, INCLUDING WIRING, DAMAGED DUE TO ELECTRICAL INJURY DISTURBANCES, CAUSED BY ARTIFICIALLY GENERATED ELECTRICAL CURRENTS, UNLESS FIRE FOLLOWS AND THEN ONLY LOSS OR DAMAGE CAUSED BY FIRE IS COVERED.

7. DOUBLE RECOVERY: **WE** WILL NOT PAY FOR ANY LOSS IF AN **INSURED PERSON** HAS COLLECTED FOR THE SAME LOSS FROM OTHERS.

NEWLY ACQUIRED PROPERTY
THIS PROVISION APPLIES ONLY TO THE JEWELRY, FURS, CAMERAS AND MUSICAL INSTRUMENTS CLASSES WHEN SIMILAR PROPERTY IS ALREADY DESCRIBED AND SCHEDULED IN THIS ENDORSEMENT.

WE WILL ONLY COVER NEWLY ACQUIRED PROPERTY OF AN **INSURED PERSON** FOR ITS ACTUAL VALUE PROVIDED **YOU** REPORT THE NEWLY ACQUIRED PROPERTY TO **US** WITHIN 30 DAYS OF ACQUISITION AND PAY THE ADDITIONAL PREMIUM FROM THE DATE ACQUIRED.

COVERAGE FOR EACH CLASS OF PROPERTY TO WHICH THIS PROVISION APPLIES WILL NOT EXCEED 25% OF THE AMOUNT OF INSURANCE FOR THAT CLASS OF PROPERTY OR $10,000, WHICHEVER IS LESS.

EXCLUSIONS—LOSSES WE DO NOT COVER

1. **WE** WILL NOT COVER LOSS OR DAMAGE TO THE DESCRIBED PROPERTY CAUSED BY WEAR AND TEAR, GRADUAL DETERIORATION, INSECTS, VERMIN OR INHERENT VICE.

2. **WE** WILL NOT COVER LOSS OR DAMAGE CAUSED BY NUCLEAR ACTION, MEANING NUCLEAR REACTION,DISCHARGE OR RADIATION OR RADIOACTIVITY, OR ANY CONSEQUENCE OF ANY OF THESE. LOSS BY NUCLEAR ACTION IS NOT CONSIDERED LOSS BY FIRE, EXPLOSION OR SMOKE. DIRECT LOSS BY FIRE RESULTING FROM NUCLEAR ACTION IS COVERED.

3. **WE** WILL NOT COVER LOSS OR DAMAGE CAUSED BY WAR OR WARLIKE ACTS, INCLUDING INSURRECTION, REBELLION, OR REVOLUTION.

4. If Fine Arts are covered, **WE** WILL NOT COVER:
   (A) LOSS OR DAMAGE CAUSED BY ANY REPAIRING, RESTORATION OR RETOUCHING PROCESS;
   (B) BREAKAGE OF ART GLASS WINDOWS, STATUARY, MARBLES, GLASSWARE, BRIC-A-BRAC, PORCELAINS AND SIMILAR FRAGILE ITEMS, UNLESS CAUSED BY FIRE, LIGHTNING, WINDSTORM, AIRCRAFT, THEFT OR ATTEMPTED THEFT, EARTHQUAKE, FLOOD, EXPLOSION, MALICIOUS DAMAGE, OR COLLISION, DERAILMENT OR OVERTURN OF CONVEYANCE, OR UNLESS COVERAGE FOR BREAKAGE IS INDICATED IN THE SCHEDULE AND AN ADDITIONAL PREMIUM IS PAID;
   (C) PROPERTY ON EXHIBITION AT FAIR GROUNDS OR ON ANY NATIONAL OR INTERNATIONAL EXPOSITION PREMISES, UNLESS OTHERWISE INDICATED IN THIS ENDORSEMENT.

5. If Sports Equipment, other than golf equipment, is covered, **WE** WILL NOT COVER LOSS OR DAMAGE CAUSED BY:
   (A) ANY REFINISHING, RENOVATING OR REPAIRING PROCESS; DAMPNESS OR EXTREMES OF TEMPERATURE; OR, RUST FOULING OR EXPLOSION OF FIREARMS;
   (B) BREAKAGE, MARRING, SCRATCHING, TEARING OR DENTING UNLESS CAUSED BY FIRE, THEFT OR ACCIDENTS TO CONVEYANCES; OR
   (C) DISHONEST ACTS OF AN **INSURED PERSON'S** EMPLOYEES OR PERSONS TO WHOM THE COVERED PROPERTY MAY BE ENTRUSTED OR RENTED.

6. If Stamp or Coin Collections are covered, **WE** WILL NOT COVER LOSS OR DAMAGE RESULTING FROM:
   (A) FADING, CREASING, DENTING, SCRATCHING, TEARING, THINNING, TRANSFER OF COLORS,INHERENT DEFECT, DAMPNESS, EXTREMES OF TEMPERATURE, GRADUAL DEPRECIATION, OR DAMAGE SUSTAINED FROM HANDLING OR WHILE BEING ACTUALLY WORKED ON;
   (B) MYSTERIOUS DISAPPEARANCE OF INDIVIDUAL STAMPS, COINS OR OTHER INDIVIDUAL ITEMS **WE** COVER UNLESS SPECIFICALLY DESCRIBED WITH A DEFINITE AMOUNT SET OPPOSITE THEIR DESCRIPTION, OR IF

NOT SPECIFICALLY DESCRIBED, UNLESS MOUNTED IN A VOLUME, AND THE PAGE TO WHICH THEY ARE ATTACHED IS ALSO LOST;

(C) THEFT FROM ANY UNATTENDED AUTOMOBILE EXCEPT WHILE BEING SHIPPED BY REGISTERED MAIL UNLESS COVERAGE FOR EXTENDED THEFT IS INDICATED IN THE SCHEDULE AND AN ADDITIONAL PREMIUM IS PAID;

(D) LOSS TO PROPERTY IN THE CUSTODY OF TRANSPORTATION COMPANIES; NOR SHIPMENTS BY MAIL UNLESS BY REGISTERED MAIL; OR

(E) LOSS TO ANY PROPERTY DESCRIBED IN THE SCHEDULE WHICH IS NOT AN ACTUAL PART OF A STAMP, COIN OR NUMISMATIC COLLECTION.

7. If Business Personal Property is covered, **WE** WILL NOT COVER LOSS OR DAMAGE RESULTING FROM:
   (A) FREEZING, CONTAMINATION, DAMPNESS OF ATMOSPHERE, EXTREMES OF TEMPERATURES, CORROSION OR RUST;
   (B) BREAKAGE, MARRING, SCRATCHING, CHIPPING OR DENTING, UNLESS CAUSED BY FIRE, EXPLOSION, THEFT, WINDSTORM, EARTHQUAKE, FLOOD, VANDALISM, MALICIOUS MISCHIEF, OR COLLISION, DERAILMENT OR OVERTURNING OF THE TRANSPORTING CONVEYANCE;
   (C) DISHONEST ACTS OF AN **INSURED PERSON'S** EMPLOYEES, WHETHER IN THE SCOPE OF EMPLOYMENT OR NOT, OR ANY PERSON TO WHOM THE PROPERTY IS ENTRUSTED (EXCEPT CARRIERS FOR HIRE);
   (D) MECHANICAL OR STRUCTURAL FAILURE OF TOOLS, OR BREAKDOWN, DEFECT OR FAILURE OF MACHINES OR POWER TOOLS;
   (E) THEFT OF TOOLS FROM AN UNATTENDED VEHICLE UNLESS THE VEHICLE IS SECURELY CLOSED AND LOCKED AND EVIDENCE OF FORCIBLE ENTRY IS VISIBLE OR THE ENTIRE VEHICLE IS STOLEN OR UNLESS THE **INSURED** PROPERTY IS IN THE CUSTODY OF A COMMON CARRIER;
   (F) ANY PROCESS OR SERVICE RESULTING IN SHRINKAGE, CHANGE IN COLOR, FINISH OR OTHER CHANGE IN THE DESCRIBED PROPERTY; OR
   (G) DISCLOSURE OF ANY INVENTORY SHORTAGE.

HOW WE SETTLE A LOSS

1. UNLESS OTHERWISE PROVIDED IN THIS ENDORSEMENT:
   (A) THE VALUE OF THE COVERED PROPERTY WILL BE DETERMINED AT THE TIME OF LOSS; AND
   (B) LOSS OR DAMAGE TO COVERED PERSONAL PROPERTY WILL BE SETTLED ON AN ACTUAL CASH VALUE BASIS. THIS MEANS THERE MAY BE A DEDUCTION FOR DEPRECIATION. PAYMENT WILL NOT EXCEED THE AMOUNT NECESSARY TO REPAIR OR REPLACE THE DAMAGED ITEMS(S) WITH PROPERTY OF LIKE KIND AND QUALITY, OR THE AMOUNT OF INSURANCE, WHICHEVER IS LESS.

2. Loss to covered Fine Arts will be settled as follows:
   (A) **WE** WILL PAY THE AMOUNT OF INSURANCE SHOWN FOR EACH DESCRIBED ITEM AND **WE** AGREE IT IS THE VALUE OF THE ITEM FOR THE PURPOSE OF LOSS SETTLEMENT.
   (B) IF THERE IS A LOSS TO A PAIR OR SET, **WE** AGREE TO PAY THE AMOUNT OF INSURANCE FOR THE DESCRIBED PAIR OR SET. **YOU** AGREE TO GIVE **US** THE REMAINING ITEM OR ITEMS.

3. Loss to covered Stamps and Coins will be settled as follows:
   (A) **WE** WILL PAY UP TO BUT NOT EXCEEDING THE AMOUNT OF INSURANCE SET OPPOSITE ANY ONE STAMP, COIN OR OTHER INDIVIDUAL ITEM IN CASE OF LOSS OR DAMAGE TO THAT ITEM.
   (B) Loss to covered property described as pairs, strips, blocks, series, sheets, covers, frames or cards will be settled as follows:
      (1) IF THERE IS A TOTAL LOSS, **WE** WILL PAY UP TO BUT NOT EXCEEDING THE AMOUNT OF INSURANCE SET OPPOSITE THE ITEM INVOLVED.

(2) IF THERE IS A PARTIAL LOSS, **WE** WILL PAY THE ACTUAL CASH MARKET VALUE OF THE WHOLE SET, LESS THE CASH MARKET VALUE OF THE REMAINDER AT THE TIME OF LOSS, BUT NOT MORE THAN THE AMOUNT OF INSURANCE SET OPPOSITE THE PROPERTY INVOLVED. HOWEVER, IF THE COVERED PROPERTY INVOLVED IS INSURED FOR LESS THAN THE CASH MARKET VALUE, **WE** WILL ONLY PAY THE PROPORTION THAT THE AMOUNT OF INSURANCE BEARS TO THE CASH MARKET VALUE.

(C) When coins or stamps are covered on a blanket basis, **WE** WILL PAY THE CASH MARKET VALUE AT THE TIME OF LOSS NOT EXCEEDING $1,000 ON ANY UNSCHEDULED NUMISMATIC PROPERTY, AND NOT MORE THAN $250 FOR ONE STAMP, COIN OR INDIVIDUAL ITEM, OR ANY PAIR, STRIP BLOCK, SERIES, SHEET, COVER, FRAME OR CARD.

(D) WE WILL NOT PAY FOR A GREATER PROPORTION OF ANY LOSS TO PROPERTY COVERED ON A BLANKET BASIS THAN THE TOTAL AMOUNT OF INSURANCE ON THE PROPERTY BEARS TO THE ACTUAL CASH MARKET VALUE OF THE PROPERTY AT THE TIME OF LOSS.

4. Loss to covered Business Personal Property will be settled as follows:
   (A) **WE** WILL PAY UP TO BUT NOT EXCEEDING THE AMOUNT OF INSURANCE SET OPPOSITE ANY INDIVIDUAL HAND OR POWER TOOL IN CASE OF LOSS OR DAMAGE TO THAT ITEM.
   (B) SUBJECT TO THE AMOUNT OF INSURANCE, **WE** will pay for loss to property described as a pair, set or parts as follows:
      (1) **WE** MAY ELECT TO REPAIR OR REPLACE ANY PART TO RESTORE THE PAIR OR SET TO ITS VALUE BEFORE THE LOSS; OR PAY THE DIFFERENCE BETWEEN THE ACTUAL CASH VALUE OF THE PROPERTY BEFORE AND AFTER THE LOSS.
      (2) IN THE CASE OF A LOSS TO ANY PART OF COVERED PROPERTY, CONSISTING OF SEVERAL PARTS WHEN COMPLETE, **WE** WILL PAY FOR THE ACTUAL CASH VALUE OF THE PART LOST OR DAMAGED.

POLICY CONDITIONS THAT APPLY

THIS ENDORSEMENT IS SUBJECT TO THE PROVISIONS AND CONDITIONS OF THE POLICY WHICH APPLY TO THE PERSONAL PROPERTY PROTECTION COVERAGE OTHER THAN:

1. Limits of Liability;
2. Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C, Sections C—F;
3. Deductible;
4. Other Insurance; and
5. Any provisions or conditions that are inconsistent with this endorsement.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

LENDER'S LOSS PAYABLE ENDORSEMENT — APC275 (10-78)

1. Loss or damage, if any, under this policy shall be paid, as provided in this Endorsement, to the Payee named on the first page of this policy, its successors and assigns, hereinafter referred to as "the Lender," in whatever form or capacity its interests may appear and whether said interest be vested in said Lender in its individual or in its disclosed or undisclosed fiduciary or representative capacity, or otherwise, or vested in a nominee or trustee of said Lender.

2. The insurance under this policy, or any rider or endorsement attached thereto, as to the interest only of the Lender, its successors and assigns, shall not be invalidated nor suspended: (a) by any error, omission, or change respecting the ownership, description, possession, or location of the subject of the insurance or the interest therein, or the title thereto; (b) by the commencement of foreclosure proceedings or the giving of notice of sale of any of the property covered by this policy by virtue of any mortgage or trust deed; (c) by any breach of warranty, act, omission, neglect, or non-compliance with any of the provisions of this policy, including any and all riders now or hereafter attached thereto, by the named insured, the borrower, mortgagor, trustor, vendee, owner, tenant, warehouseman, custodian, occupant, or by the agents of either or any of them or by the happening of any event permitted by them or either of them, or their agents, or which they failed to prevent, whether occurring before or after the attachment of this endorsement, or whether before or after a loss, which under the provisions of this policy of insurance or of any rider or endorsement attached thereto would invalidate or suspend the insurance as to the named insured, excluding herefrom, however, any acts or omissions of the Lender while exercising active control and management of the property.

3. In the event of failure of the insured to pay any premium or additional premium which shall be or become due under the terms of this policy or on account of any change in occupancy or increase in hazard not permitted by this policy, this Company agrees to give written notice to the Lender of such non-payment of premium after sixty (60) days from and within one hundred and twenty (120) days after due date of such premium and it is a condition of the continuance of the rights of the Lender hereunder that the Lender when so notified in writing by this Company of the failure of the insured to pay such premium shall pay or cause to be paid the premium due within ten (10) days following receipt of the Company's demand in writing therefor. If the Lender shall decline to pay said premium or additional premium, the rights of the Lender under this Lender's Loss Payable Endorsement shall not be terminated before ten (10) days after receipt of said written notice by the Lender.

4. Whenever this Company shall pay to the Lender any sum for loss or damage under this policy and shall claim that as to the insured no liability therefor exists, this Company, at its option, may pay to the Lender the whole principal sum and interest and other indebtedness due or to become due from the insured, whether secured or unsecured, (with refund of all interest not accrued), and this Company, to the extent of such payment, shall thereupon receive a full assignment and transfer, without recourse, of the debt and all rights and securities held as collateral thereto.

5. If there be any other insurance upon the within described property, this Company shall be liable under this policy as to the Lender for the proportion of such loss or damage that the sum hereby insured bears to the entire insurance of similar character on said property under policies held by, payable to and expressly consented to by the Lender. Any Contribution Clause included in any Fallen Building Clause Waiver or any Extended Coverage

Endorsement attached to this contract of insurance is hereby nullified, and also any Contribution Clause in any other endorsement or rider attached to this contract of insurance is hereby nullified except Contribution Clauses for the compliance with which the insured has received reduction in the rate charged or has received extension of the coverage to include hazards other than fire and compliance with such Contribution Clause is made a part of the consideration for insuring such other hazards. The Lender upon the payment to it of the full amount of its claim, will subrogate this Company (pro rata with all other insurers contributing to said payment) to all of the Lender's rights of contribution under said other insurance.

6. This Company reserves the right to cancel this policy at any time, as provided by its terms, but in such case this policy shall continue in force for the benefit of the Lender for ten (10) days after written notice of such cancellation is received by the Lender and shall then cease.

7. This policy shall remain in full force and effect as to the interest of the Lender for a period of ten (10) days after its expiration unless an acceptable policy in renewal thereof with loss thereunder payable to the Lender in accordance with the terms of this Lender's Loss Payable Endorsement, shall have been issued by some insurance company and accepted by the Lender.

8. Should legal title to and beneficial ownership of any of the property covered under this policy become vested in the Lender or its agents, insurance under this policy shall continue for the term thereof for the benefit of the Lender but, in such event, any privileges granted by this Lender's Loss Payable Endorsement which are not also granted the insured under the terms and conditions of this policy and/or under other riders or endorsements attached thereto shall not apply to the insurance hereunder as respects such property.

9. All notices herein provided to be given by the Company to the Lender in connection with this policy and this Lender's Loss Payable Endorsement shall be mailed to or delivered to the Lender at its office or branch described on the first page of the policy.

Approved:
Board of Fire Underwriters of the Pacific,
California Bankers' Association,
Committee on Insurance.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Guaranteed Renewal for Claims Endorsement – APC308

When the Policy Declarations indicates that the Guaranteed Renewal for Claims Endorsement applies, the following provision is added to the **General** section of the policy:

Guaranteed Renewal for Claims
When this Guaranteed Renewal for Claims provision is part of the policy, any decision by **us** not to renew or continue the policy will be made without regard to the number of claims reported under the policy. However, nothing in this provision shall limit **our** right not to renew or continue the policy for any other legally permissible reason(s), including the type(s) of claims reported under the policy.

All other policy terms and conditions apply.

Allstate Property and Casualty Insurance Company

RENEWAL

Homeowners Policy Declarations

Summary

NAMED INSURED(S)
David and Pam Gagnon
39010 90th Place
Genoa City WI 53128-2402

YOUR ALLSTATE AGENT IS:
Michael Koch Ins
612 S Wells, Unit F
Lake Geneva WI 53147

CONTACT YOUR AGENT AT:
(262) 248-0861

POLICY NUMBER
9 12 697167 10/24

POLICY PERIOD
Begins on Oct. 24, 2010
at 12:01 A.M. standard time,
with no fixed date of expiration

PREMIUM PERIOD
Oct. 24, 2010 to Oct. 24, 2011
at 12:01 A.M. standard time

LOCATION OF PROPERTY INSURED
39010 90th Place, Genoa City, WI 53128-2402

MORTGAGEE
- WELLS FARGO BANK NA 936 ITS SUCCESSORS
  &/OR ASSIGNS
  P O Box 100515 Florence SC 29502-0515 *Loan # 0254903834*

Total Premium for the Premium Period *(Your bill will be mailed separately)*

Premium for Property Insured	$565.91
Premium for Scheduled Personal Property Coverage	$50.00
TOTAL	**$615.91**

Your premium reflects the Gold Protection package.

PROP *5100048100810530042210003*



Information as of August 10, 2010

Allstate Property and Casualty Insurance Company

Policy Number: **9 12 697167 10/24** Your Agent: **Michael Koch Ins (262) 248-0861**
For Premium Period Beginning: **Oct. 24, 2010**

COVERAGE AND APPLICABLE DEDUCTIBLES (See Policy for Applicable Terms, Conditions and Exclusions)	LIMITS OF LIABILITY	
Dwelling Protection - with Building Structure Reimbursement Extended Limits • $500 All Peril Deductible Applies	$135,174	
Other Structures Protection • $500 All Peril Deductible Applies	$60,186	
Personal Property Protection - Reimbursement Provision • $500 All Peril Deductible Applies	$101,381	
Additional Living Expense	Up To 12 Months	
Family Liability Protection	$300,000	each occurrence
Guest Medical Protection	$1,000	each person

DISCOUNTS

Your premium reflects the following discounts on applicable coverage(s):

Protective Device (SPP)	5.00 %	Home and Auto	35.00 %
Protective Device	3.00 %	Claim Free	15.00 %

RATING INFORMATION

The dwelling is of Frame construction and is occupied by 1 family
Your dwelling is 2 mile(s) to the fire department

Allstate Property and Casualty Insurance Company

Policy Number: **9 12 697167 10/24** Your Agent: **Michael Koch Ins (262) 248-0861**
For Premium Period Beginning: **Oct. 24, 2010**

Scheduled Personal Property Coverage

Your policy includes Scheduled Personal Property Coverage. Please refer to the Scheduled Personal Property endorsement (form APC273) for terms, conditions and exclusions applicable to your Scheduled Personal Property Coverage.

PROPERTY CLASS(ES) AND APPLICABLE DEDUCTIBLES	**TOTAL OF INDIVIDUAL ITEM LIMITS PER CLASS** (See your APC273 for coverage limits applicable for each scheduled item)
Jewelry	$5,265

Your Policy Documents

Your Homeowners policy consists of this Policy Declarations and the documents listed below. Please keep these together.

- Homeowners Policy form APC268
- Extended Protection Amendatory End. form APC270
- Scheduled Personal Property End. form APC273
- Wisconsin Homeowners Amendatory End. form APC242-2
- Lender's Loss Payable Endorsement form APC275
- Guaranteed Renewal for Claims form APC308

Important Payment and Coverage Information

The Property Insurance Adjustment condition applies.

Do not pay. Mortgagee has been billed.

IN WITNESS WHEREOF, **Allstate Property and Casualty Insurance Company** has caused this policy to be signed by two of its officers at Northbrook, Illinois, and if required by state law, this policy shall not be binding unless countersigned on the Policy Declarations by an authorized agent of **Allstate Property and Casualty Insurance Company.**

Frederick F. Cripe
President

Mary J. McGinn
Secretary

Allstate Property and Casualty Insurance Company Homeowners Policy

Policy:

Issued to:

Effective:



Allstate Property and Casualty Insurance Company
The Company Named in the Policy Declarations
A Stock Company—Home Office: Northbrook, Illinois 60062

APC268

Dulberg 000078

Table of Contents

Agreements We Make With You....2

General
Definitions Used In This Policy....2
Insuring Agreement....4
Conformity To State Statutes....4
Coverage Changes....4
Policy Transfer....4
Continued Coverage After Your Death....4
Cancellation....4
Misrepresentation, Fraud or Concealment....5
What Law Will Apply....5
Where Lawsuits May Be Brought....5
Action Against Us....6
Arbitration....6

Section I—Your Property

Coverage A
Dwelling Protection
Property We Cover Under Coverage A....6
Property We Do Not Cover Under Coverage A....6

Coverage B
Other Structures Protection
Property We Cover Under Coverage B....6
Property We Do Not Cover Under Coverage B....7

Losses We Cover Under Coverages A and B....7

Coverage C
Personal Property Protection
Property We Cover Under Coverage C....7
Limitations On Certain Personal Property....7
Property We Do Not Cover Under Coverage C....8
Losses We Cover Under Coverage C....8

Additional Protection
Additional Living Expense....10
Credit Card, Debit Card or Automated Teller Machine Card, Bank Fund Transfer Card, Check Forgery and Counterfeit Money....10
Debris Removal....11
Emergency Removal Of Property....11
Fire Department Charges....11
Temporary Repairs After A Loss....11
Trees, Shrubs, Plants and Lawns....12
Temperature Change....12
Power Interruption....12
Arson Reward....12
Collapse....12
Land....13
Lock Replacement....13

Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C....13

Section I Conditions
Deductible....16
Insurable Interest and Our Liability....16
What You Must Do After A Loss....16
Our Settlement Options....17
How We Pay For A Loss....17
Our Settlement Of Loss....19
Appraisal....19
Abandoned Property....20
Permission Granted To You....20
Our Rights To Recover Payment....20
Our Rights To Obtain Salvage....20
Action Against Us....20
Loss To A Pair Or Set....20
Glass Replacement....20
No Benefit To Bailee....20
Other Insurance....20
Property Insurance Adjustment....20
Mortgagee....21
Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss....21

Section II—Family Liability and Guest Medical Protection

Coverage X
Family Liability Protection
Losses We Cover Under Coverage X....22

Coverage Y
Guest Medical Protection
Losses We Cover Under Coverage Y....22

Additional Protection
Claim Expense....22
Emergency First Aid....22

Dulberg 000079

Damage To Property Of Others 23

Losses We Do Not Cover Under Coverage X and Coverage Y 23

Section II Conditions

What You Must Do After An Accidental Loss.....25
What An Injured Person Must Do—Coverage Y—Guest Medical Protection 26
Our Payment of Loss · Coverage Y—Guest Medical Protection.....26
Our Limits Of Liability 26
Bankruptcy 26
Our Rights To Recover Payment—Coverage X—Family Liability Protection.....26
Action Against Us.....26
Other Insurance—Coverage X—Family Liability Protection.....27

Section III—Optional Protection

Optional Coverages You May Buy

Coverage BC
Building Codes 27
Coverage BP
Increased Coverage On Business Property.....27
Coverage DP
Increased Coverage On Electronic Data Processing Equipment 27
Coverage F
Fire Department Charges 27
Coverage G
Loss Assessments.....27
Coverage J
Extended Coverage On Jewelry, Watches and Furs 28
Coverage K
Incidental Office, Private School Or Studio.....28
Coverage M
Increased Coverage On Money.....29
Coverage P
Business Pursuits.....29
Coverage S
Increased Coverage On Securities.....29
Coverage SD
Satellite Dish Antennas 29
Coverage ST
Increased Coverage On Theft Of Silverware 29

Agreements We Make With You

We make the following agreements with **you**:

General

Definitions Used In This Policy

Throughout this policy, when the following words appear in bold type, they are defined as follows:

1. **Bodily injury**—means physical harm to the body, including sickness or disease, and resulting death, except that **bodily injury** does not include:
   a) any venereal disease;
   b) Herpes;
   c) Acquired Immune Deficiency Syndrome (AIDS);
   d) AIDS Related Complex (ARC);
   e) Human Immunodeficiency Virus (HIV);

   or any resulting symptom, effect, condition, disease or illness related to a) through e) listed above.

   In addition, **bodily injury** does not include any symptom, effect, condition, disease or illness resulting in any manner from:
   a) lead in any form;
   b) asbestos in any form;
   c) radon in any form; or
   d) oil, fuel oil, kerosene, liquid propane or gasoline intended for, or from, a storage tank located at the **residence premises**.

2. **Building structure**—means a structure with walls and a roof.

3. **Business**—means:
   a) any full- or part-time activity of any kind engaged in for economic gain including the use of any part of any premises for such purposes. The providing of home day care services to other than an **insured person** or relative of an **insured person** for economic gain is also a **business**.

      However, the mutual exchange of home day care services is not considered a **business**;

b) the rental or holding for rental of property by an **insured person**. Rental of **your residence premises** is not considered a **business** when:
   1) it is rented occasionally for residential purposes;
   2) a portion is rented to roomers or boarders, provided not more than two roomers or boarders reside on the **residence premises** at any one time; or
   3) a portion is rented as a private garage.

4. **Dwelling**—means the single family **building structure** identified as the insured property on the Policy Declarations, where **you** reside and which is principally used as a private residence.

5. **Insured person(s)**—means **you** and, if a resident of **your** household:
   a) any relative; and
   b) any person under the age of 21 in **your** care.

   Under **Coverage X—Family Liability Protection** and **Coverage Y—Guest Medical Protection**, **insured person** also means:
   a) any person or organization legally responsible for loss caused by animals or watercraft covered by this policy which are owned by an **insured person**. **We** do not cover any person or organization using or having custody of animals or watercraft in any **business**, or without permission of the owner;
   b) with respect to the use of any vehicle covered by this policy, any person while engaged in the employment of an **insured person**.

6. **Insured premises**—means:
   a) the **residence premises**; and
   b) under **Section II** only:
      1) the part of any other premises, other structures and grounds used by **you** as a residence. This includes premises, structures and grounds **you** acquire for **your** use as a private residence while this policy is in effect;
      2) any part of a premises not owned by an **insured person** but where an **insured person** is temporarily living;
      3) cemetery plots or burial vaults owned by an **insured person**;
      4) land owned by or rented to an **insured person** where a single family dwelling is being built as that person's residence;
      5) any premises used by an **insured person** in connection with the **residence premises**;
      6) any part of a premises occasionally rented to an **insured person** for other than **business** purposes.

7. **Occurrence**—means an accident, including continuous or repeated exposure to substantially the same general harmful conditions during the policy period, resulting in **bodily injury** or **property damage.**

8. **Property damage**—means physical injury to or destruction of tangible property, including loss of its use resulting from such physical injury or destruction.

9. **Remediation**—means the reasonable and necessary treatment, removal or disposal of mold, fungus, wet rot or dry rot as required to complete repair or replacement of property **we** cover under **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** damaged by a covered water loss, including payment for any reasonable increase in living expenses necessary to maintain **your** normal standard of living if mold, fungus, wet rot or dry rot makes **your residence premises** uninhabitable. **Remediation** also includes any investigation or testing to detect, measure or evaluate mold, fungus, wet rot or dry rot.

10. **Residence employee**—means an employee of an **insured person** while performing duties arising out of and in the course of employment in connection with the maintenance or use of **your residence premises**. This includes

similar duties performed elsewhere for an **insured person**, not in connection with the **business** of an **insured person**.

11. **Residence premises** —means the **dwelling**, other structures and land located at the address stated on the Policy Declarations.

12. **We, us** or **our** —means the company named on the Policy Declarations.

13. **You** or **your** —means the person listed under Named Insured(s) on the Policy Declarations as the insured and that person's resident spouse.

Insuring Agreement

In reliance on the information **you** have given **us**, **we** agree to provide the coverages indicated on the Policy Declarations. In return, **you** must pay the premium when due and comply with the policy terms and conditions, and inform **us** of any change in title, use or occupancy of the **residence premises**.

Subject to the terms of this policy, the Policy Declarations shows the location of the **residence premises**, applicable coverages, limits of liability and premiums. The policy applies only to losses or **occurrences** that take place during the policy period. The Policy Period is shown on the Policy Declarations. This policy is not complete without the Policy Declarations.

This policy imposes joint obligations on the Named Insured(s) listed on the Policy Declarations as the insured and on that person's resident spouse. These persons are defined as **you** or **your**. This means that the responsibilities, acts and omissions of a person defined as **you** or **your** will be binding upon any other person defined as **you** or **your**.

This policy imposes joint obligations on persons defined as an **insured person**. This means that the responsibilities, acts and failures to act of a person defined as an **insured person** will be binding upon another person defined as an **insured person**.

Conformity To State Statutes

When the policy provisions conflict with the statutes of the state in which the **residence premises** is located, the provisions are amended to conform to such statutes.

Coverage Changes

When **we** broaden coverage during the premium period without charge, **you** have the new features if **you** have the coverage to which they apply. Otherwise, the policy can be changed only by endorsement.

The coverage provided and the premium for the policy is based on information **you** have given **us**. **You** agree to cooperate with **us** in determining if this information is correct and complete. **You** agree that if this information changes, is incorrect or incomplete, **we** may adjust **your** coverage and premium accordingly during the premium period.

Any calculation of **your** premium or changes in **your** coverage will be made using the rules, rates and forms on file, if required, for **our** use in **your** state. The rates in effect at the beginning of **your** current premium period will be used to calculate any change in **your** premium.

Policy Transfer

You may not transfer this policy to another person without **our** written consent.

Continued Coverage After Your Death

If **you** die, coverage will continue until the end of the premium period for:

1) **your** legal representative while acting as such, but only with respect to the **residence premises** and property covered under this policy on the date of **your** death.
2) an **insured person**, and any person having proper temporary custody of **your** property until a legal representative is appointed and qualified.

Cancellation

Your Right to Cancel:
You may cancel this policy by notifying **us** of the future date **you** wish to stop coverage.

Our Right to Cancel:
We may cancel this policy by mailing notice to **you** at the mailing address shown on the Policy

Declarations. When this policy has been in effect for less than 60 days, and it is not a renewal with **us**, **we** may cancel this policy for any reason by giving **you** at least 10 days notice before the cancellation takes effect.

When the policy has been in effect for 60 days or more, or if it is a renewal with **us**, **we** may cancel this policy for one or more of the following reasons:

1) non-payment of premium;
2) the policy was obtained by misrepresentation, fraud or concealment of material facts;
3) material misrepresentation, fraud or concealment of material facts in presenting a claim, or violation of any of the policy terms; or
4) there has been a substantial change or increase in hazard in the risk **we** originally accepted.

If the cancellation is for non-payment of premium, **we** will give **you** at least 10 days notice. If the cancellation is for any of the other reasons, **we** will give **you** at least 30 days notice.

Our mailing the notice of cancellation to **you** will be deemed proof of notice. Coverage under this policy will terminate on the effective date and hour stated on the cancellation notice. **Your** return premium, if any, will be calculated on a pro rata basis and refunded at the time of cancellation or as soon as possible. However, refund of unearned premium is not a condition of cancellation.

Our Right Not to Renew or Continue:
We have the right not to renew or continue the policy beyond the current premium period. If **we** do not intend to continue or renew the policy, **we** will mail **you** notice at least 30 days before the end of the premium period. **Our** mailing the notice of nonrenewal to **you** will be deemed proof of notice.

Misrepresentation, Fraud or Concealment

We may void this policy if it was obtained by misrepresentation, fraud or concealment of material facts. If **we** determine that this policy is void, all premiums paid will be returned to **you** since there has been no coverage under this policy.

We do not cover any loss or **occurrence** in which any **insured person** has concealed or misrepresented any material fact or circumstance.

What Law Will Apply

This policy is issued in accordance with the laws of the state in which the **residence premises** is located and covers property or risks principally located in that state. Subject to the following paragraph, the laws of the state in which the **residence premises** is located shall govern any and all claims or disputes in any way related to this policy.

If a covered loss to property, or any other **occurrence** for which coverage applies under this policy happens outside the state in which the **residence premises** is located, claims or disputes regarding that covered loss to property, or any other covered **occurrence** may be governed by the laws of the jurisdiction in which that covered loss to property, or other covered **occurrence** happened, only if the laws of that jurisdiction would apply in the absence of a contractual choice of law provision such as this.

Where Lawsuits May Be Brought

Subject to the following two paragraphs, any and all lawsuits in any way related to this policy, shall be brought, heard and decided only in a state or federal court located in the state in which the **residence premises** is located. Any and all lawsuits against persons not parties to this policy but involved in the sale, administration, performance, or alleged breach of this policy, or otherwise related to this policy, shall be brought, heard and decided only in a state or federal court located in the state in which the **residence premises** is located, provided that such persons are subject to or consent to suit in the courts specified in this paragraph.

If a covered loss to property, or any other **occurrence** for which coverage applies under this policy happens outside the state in which the **residence premises** is located, lawsuits regarding that covered loss to property, or any other covered **occurrence** may also be brought in the judicial district where that covered loss to property, or any other covered **occurrence** happened.

Nothing in this provision, **Where Lawsuits May Be Brought**, shall impair any party's right to remove a state court lawsuit to a federal court.

Action Against Us

No one may bring an action against **us** unless there has been full compliance with all policy terms.

Any action against **us** to which neither the **Action Against Us** provision located in **Section I Conditions** nor the **Action Against Us** provision located in **Section II Conditions** applies must be commenced within one year of the date the cause of action accrues.

If an action is brought asserting claims relating to the existence or amount of coverage, or the amount of loss for which coverage is sought, under different coverages of this policy, the claims relating to each coverage shall be treated as if they were separate actions for the purpose of the time limit to commence action.

Arbitration

Any claim or dispute in any way related to this policy, by an **insured person** against **us** or **us** against an **insured person**, may be resolved by arbitration only upon mutual consent of the parties. Arbitration pursuant to this provision shall be subject to the following:

a) no arbitrator shall have the authority to award punitive damages or attorney's fees;
b) neither of the parties shall be entitled to arbitrate any claims or disputes in a representative capacity or as a member of a class; and
c) no arbitrator shall have the authority, without the mutual consent of the parties, to consolidate claims or disputes in arbitration.

Section I– Your Property

Coverage A
Dwelling Protection

Property We Cover Under Coverage A:

1. **Your dwelling** including attached structures. Structures connected to **your dwelling** by only a fence, utility line, or similar connection are not considered attached structures.

2. Construction materials and supplies at the **residence premises** for use in connection with **your dwelling**.

3. Wall-to-wall carpeting fastened to **your dwelling**.

Property We Do Not Cover Under Coverage A:

1. Any structure including fences or other property covered under **Coverage B —Other Structures Protection**.

2. Land.

3. Satellite dish antennas and their systems, whether or not attached to **your dwelling**.

Coverage B
Other Structures Protection

Property We Cover Under Coverage B:

1. Structures at the address shown on the Policy Declarations separated from **your dwelling** by clear space.

2. Structures connected to **your dwelling** by only a fence, utility line, or similar connection.

3. Construction materials and supplies at the address of the **residence premises** for use in connection with structures other than **your dwelling**.

4. Wall-to-wall carpeting fastened to **building structures** on the **residence premises** other than **your dwelling**.

Property We Do Not Cover Under Coverage B:

1. Structures used in whole or in part for **business** purposes.
2. Any structure or other property covered under **Coverage A—Dwelling Protection.**
3. Land.
4. Construction materials and supplies at the address of the **residence premises** for use in connection with the **dwelling**.
5. Satellite dish antennas and their systems, whether or not attached to **building structures.**

Losses We Cover Under Coverages A and B:

We will cover sudden and accidental direct physical loss to property described in **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection** except as limited or excluded in this policy.

Coverage C Personal Property Protection

Property We Cover Under Coverage C:

1. Personal property owned or used by an **insured person** anywhere in the world. When personal property is located away from the **residence premises**, coverage is limited to 10% of **Coverage C—Personal Property Protection.**
2. At **your** option, personal property owned by a guest or **residence employee** while the property is in a residence **you** are occupying.

Limitations On Certain Personal Property:

Limitations apply to the following groups of personal property. If personal property can reasonably be considered a part of two or more of the groups listed below, the lowest limit will apply. These limitations do not increase the amount of insurance under **Coverage C—Personal Property Protection**. The total amount of coverage for each group in any one loss is as follows:

1. $50— Money, bullion, bank notes, coins and other numismatic property, scrip, stored value cards and smart cards.
2. $200— Property used or intended for use in a **business** while the property is away from the **residence premises.** This does not include electronic data processing equipment or the recording or storage media used with that equipment.
3. $250— Theft of any recording or storage media while such property is away from the **residence premises,** whether or not it is used with electronic data processing equipment or in a **business**. Recording or storage media includes, but is not limited to:
   a) tapes;
   b) CDs, DVDs and other discs;
   c) records;
   d) disks;
   e) reels;
   f) cassettes;
   g) cartridges; or
   h) programs.
4. $500— Theft of tools and their accessories.
5. $1,000— Theft of jewelry, watches, precious and semi-precious stones, gold other than goldware, silver other than silverware, pewter other than pewterware, platinum other than platinumware and furs, including any item containing fur which represents its principal value.
6. $1,000— Property used or intended for use in a **business**, including property held as samples or for sale or delivery after sale, while the property is on the **residence premises**. This does not

include electronic data processing equipment or the recording or storage media used with that equipment.

7. $1,000— Trading cards, subject to a maximum amount of $250 per card.

8. $1,000— Accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, checks, cashier's checks, traveler's checks, passports, securities, tickets, and stamps, including philatelic property.

9. $1,000— Manuscripts, including documents stored on electronic media.

10. $1,000— Watercraft, including their attached or unattached trailers, furnishings, equipment, parts, and motors.

11. $1,000— Trailers not used with watercraft.

12. $1,000— Any motorized land vehicle parts, equipment or accessories not attached to or located in or upon any motorized land vehicle.

13. $1,500— Electronic data processing equipment and the recording or storage media used with that equipment whether or not the equipment is used in a **business**. Recording or storage media will be covered only up to:
   a) the retail value of the media, if pre-programmed; or
   b) the retail value of the media in blank or unexposed form, if blank or self-programmed.

14. $2,000— Theft of firearms, their related equipment, and accessories.

15. $2,500— Motorized land vehicles used solely for the service of the **insured premises** and not licensed for use on public roads. This does not include motorized land vehicles designed for assisting the disabled.

16. $2,500— Theft of goldware, silverware, pewterware and platinumware.

Property We Do Not Cover Under Coverage C:

1. Personal property specifically described and insured by this or any other insurance.

2. Animals.

3. Motorized land vehicles, including, but not limited to, any land vehicle powered or assisted by a motor or engine. **We** do not cover any motorized land vehicle parts, equipment or accessories attached to or located in or upon any motorized land vehicle. **We** do cover motorized land vehicles designed for assisting the disabled or used solely for the service of the **insured premises** and not licensed for use on public roads subject to **Limitations On Certain Personal Property**, item 15.

4. Aircraft and aircraft parts. This does not include model or hobby craft not designed to carry people or cargo.

5. Property of roomers, boarders, or tenants not related to **you**.

6. Property located away from the **residence premises** and rented or held for rental to others.

7. Satellite dish antennas and their systems.

Losses We Cover Under Coverage C:

We will cover sudden and accidental direct physical loss to the property described in **Coverage C— Personal Property Protection**, except as limited or excluded in this policy, caused by:

1. Fire or Lightning.

2. Windstorm or Hail.

We do not cover:

a) loss to covered property inside a **building structure**, caused by rain, snow, sleet, sand or dust unless the wind or hail first damages the roof or walls and the wind

Dulberg 000086

forces rain, snow, sleet, sand or dust through the damaged roof or wall;

b) loss to watercraft and their trailers, furnishings, equipment and motors unless inside a fully enclosed **building structure**. However, **we** do cover canoes and rowboats on the **residence premises**.

3. Explosion.

4. Riot or Civil Commotion, including pillage and looting during, and at the site of, the riot or civil commotion.

5. Aircraft, including self-propelled missiles and spacecraft.

6. Vehicles.

7. Smoke.

   We do not cover loss caused by smoke from the manufacturing of controlled substances, agricultural smudging or industrial operations.

8. Vandalism and Malicious Mischief.

   We do not cover vandalism or malicious mischief if **your dwelling** has been vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

9. Falling objects.

   We do not cover loss to personal property inside a **building structure** unless the falling object first damages the exterior walls or roof of the **building structure**.

10. Weight of ice, snow or sleet which causes damage to personal property in a **building structure**, but only if the **building structure** is damaged due to the weight of ice, snow or sleet.

11. Increase or decrease of artificially generated electrical current to electronics, electrical appliances, fixtures and wiring.

12. Bulging, burning, cracking or rupture of a steam or hot water heating system, an air conditioning system, an automatic fire protection system or an appliance for heating water.

13. Water or steam that escapes from a plumbing, heating or air conditioning system, an automatic fire protection system, or from a household appliance due to accidental discharge or overflow.

    We do not cover loss to the system or appliance from which the water or steam escapes, or loss from water which backs up through sewers or drains or overflows from a sump pump, sump pump well or other system designed for the removal of subsurface water which is drained from a foundation area of a structure.

14. Freezing of a plumbing, heating or air conditioning system or a household appliance.

    We do not cover loss at the **residence premises** under perils 12), 13), and 14) caused by or resulting from freezing while the **building structure** is vacant, unoccupied or under construction unless **you** have used reasonable care to:

    a) maintain heat in the **building structure**; or

    b) shut off the water supply and drain the water from the systems and appliances.

15. Theft, or attempted theft, including disappearance of property from a known place when it is likely that a theft has occurred. Any theft must be promptly reported to the police.

    We do not cover:

    a) theft or attempted theft committed by an **insured person**;

    b) theft in or from the **residence premises** while under construction or of materials and supplies for use in construction, until the **dwelling** is completed and occupied;

c) theft of any property while at any other residence owned, rented to or occupied by an **insured person** unless the **insured person** is temporarily residing there;
d) theft of trailers, campers, watercraft, including furnishings, equipment and outboard motors, away from the **residence premises**;
e) theft from that part of the **residence premises** rented by **you** to other than an **insured person**.

16. Breakage of glass, meaning damage to covered personal property caused by breakage of glass constituting a part of any **building structure** on the **residence premises**. This does not include damage to the glass.

Additional Protection

1. **Additional Living Expense**
   a) **We** will pay the reasonable increase in living expenses necessary to maintain **your** normal standard of living when a direct physical loss **we** cover under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** makes **your residence premises** uninhabitable. However, additional living expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

      Payment for additional living expense as a result of a covered loss under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** will be limited to the least of the following:
      1) the time period required to repair or replace the property **we** cover, using due diligence and dispatch; or
      2) if **you** permanently relocate, the shortest time for **your** household to settle elsewhere; or
      3) 12 months.

      Additional Living Expense will not exceed the amount indicated on **your** Policy Declarations.

   b) **We** will pay the reasonable and necessary increase in living expenses for up to two weeks should civil authorities prohibit the use of the **residence premises** due to a loss at a neighboring premises caused by a loss **we** insure against. However, payments for increase in living expenses due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

These periods of time are not limited by the termination of this policy.

We do not cover any lost income or expense due to the cancellation of a lease or agreement.

No deductible applies to this protection.

2. **Credit Card, Debit Card or Automated Teller Machine Card, Bank Fund Transfer Card, Check Forgery and Counterfeit Money**
   We will pay for loss:
   a) that an **insured person** is legally required to pay for the unauthorized use of any
      1) credit card;
      2) debit or automated teller machine card;
      3) bank fund transfer card;
      4) code;
      5) account number;
      6) personal identification number; or
      7) other means of account access

      that can be used, alone or in conjunction with items 1) through 7) above, to obtain money, goods, services, or any other thing

of value, or that can be used to initiate a transfer of funds.

b) caused by forgery or alteration of a check or negotiable instrument made or drawn upon an **insured person's** account;

c) to an **insured person** through acceptance in good faith of counterfeit United States or Canadian paper currency.

Our maximum limit of liability for any one loss is $1,000, regardless of the number of persons involved. All loss due to forgery or unauthorized use by or involving any one person is considered one loss.

We do not cover:

a) loss arising from any **business** of an **insured person**;

b) loss caused by or at the direction of an **insured person** or any other person who has been entrusted with any credit card, debit or automated teller machine card, or bank fund transfer card;

c) loss arising out of dishonesty of an **insured person**.

When loss is discovered, the **insured person** must give **us** immediate notice. If the loss involves a credit card, debit or automated teller machine card, or bank fund transfer card, the **insured person** must also give immediate notice to the company or bank that issued the card. Failure to comply with the terms and conditions of the card voids this protection.

We will pay only for loss occurring during the policy period, including those losses discovered and reported to **us** within one year after the policy has terminated. **We** have the right to investigate and settle any claim or suit as **we** deem appropriate. Full payment of the amount of insurance for any one loss ends **our** obligation under each claim or suit arising from the loss.

When this coverage applies, **we** will defend any suit brought against an **insured person** for the enforcement of payment that an **insured person** is legally required to make as a result of the unauthorized use of any credit card, debit or automated teller machine card, or bank fund transfer card issued to or registered in the name of an **insured person**. The defense will be at **our** expense, with counsel of **our** choice.

When this coverage applies, **we** have the option to defend an **insured person** or the **insured person's** bank against a suit for the enforcement of payment legally required to be made as a result of forgery or alteration of a check or negotiable instrument made or drawn upon an **insured person's** account. The defense will be at **our** expense, with counsel of **our** choice.

No deductible applies to this protection.

3. **Debris Removal**
We will pay reasonable expenses **you** incur to remove debris of covered property damaged by a loss **we** cover. If the loss to the covered property and the cost of debris removal are more than the Limit Of Liability shown on the Policy Declarations for the covered property, **we** will pay up to an additional 5% of that limit for debris removal.

4. **Emergency Removal Of Property**
We will pay for sudden and accidental direct physical loss to covered property from any cause while removed from a premises because of danger from a loss **we** cover. Protection is limited to a 30-day period from date of removal. This protection does not increase the limit of liability that applies to the covered property.

5. **Fire Department Charges**
We will pay up to $500 for service charges made by fire departments called to protect **your** property from a loss **we** cover at the **residence premises**. No deductible applies to this protection.

6. **Temporary Repairs After A Loss**
We will reimburse **you** up to $5,000 for the reasonable and necessary cost **you** incur for temporary repairs to protect covered property from further imminent covered loss following a loss **we** cover. This coverage does not increase

the limit of liability applying to the property being repaired.

7. **Trees, Shrubs, Plants and Lawns**
We will pay up to 5% of the Limit Of Liability shown on the Policy Declarations under **Coverage A Dwelling Protection** for loss to trees, shrubs, plants and lawns at the address of the **residence premises. We** will not pay more than $500 for any one tree, shrub, or plant including expenses incurred for removing debris. This coverage applies only to direct physical loss caused by fire or lightning, explosion, riot or civil commotion, aircraft, vehicles not owned by an occupant of the **residence premises**, vandalism or malicious mischief, theft or collapse of a **building structure** or any part of a **building structure**.

We will pay up to $500 for reasonable expenses **you** incur for the removal of debris of trees at the address of the **residence premises** for direct physical loss caused by windstorm, hail, or weight of ice, snow or sleet. The fallen tree must have caused damage to property covered under **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection.**

We do not cover trees, shrubs, plants, or lawns grown for **business** purposes.

This coverage does not increase the limit of liability applying to the damaged property.

8. **Temperature Change**
We will pay for loss to covered personal property in a **building structure** at the **residence premises** resulting from a change in temperature. The change in temperature must result from a covered loss to the **building structure**.

This coverage does not increase the limit of liability applying to the damaged property.

9. **Power Interruption**
We will pay up to $500 for loss to the contents of freezers and refrigerated units on the **residence premises** caused by the interruption of power which occurs off the **residence premises.** If a power interruption is known to an **insured person**, all reasonable means must be used to protect the contents of freezers and refrigerated units.

This coverage does not increase the limit of liability applying to the damaged property.

10. **Arson Reward**
We will pay up to $5,000 for information leading to an arson conviction in connection with a fire loss to property covered under **Section I** of this policy. The $5,000 limit applies regardless of the number of persons providing information.

11. **Collapse**
We will cover at the **residence premises**:
a) the entire collapse of a covered **building structure**;
b) the entire collapse of part of a covered **building structure**; and
c) direct physical loss to covered property caused by a) or b) above.

For coverage to apply, the collapse of a **building structure** specified in a) or b) above must be a sudden and accidental direct physical loss caused by one or more of the following:
a) a loss **we** cover under **Section I, Coverage C—Personal Property Protection**;
b) weight of persons, animals, equipment or contents;
c) weight of rain, snow or ice which collects on a roof;
d) defective methods or materials used in construction, repair, remodeling or renovation, but only if the collapse occurs in the course of such construction, repair, remodeling or renovation.

Collapse as referenced herein means the covered **building structure** or part of the covered **building structure** has actually fallen down or fallen into pieces unexpectedly and

instantaneously. It does not include settling, cracking, shrinking, bulging, expansion, sagging, or bowing. Furthermore, collapse does not include or mean substantial structural impairment or imminent collapse.

Loss to an awning, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, fuel oil tank, septic tank, cistern or similar system, foundation, retaining wall, bulkhead, pier, wharf or dock is not included, unless the loss is a direct result of the collapse of a **building structure** or part of a **building structure** that is a sudden and accidental direct physical loss caused by one or more of the following:

a) a loss **we** cover under **Section I, Coverage C—Personal Property Protection**;
b) weight of persons, animals, equipment or contents; weight of rain, snow or ice which collects on a roof;
c) defective methods or materials used in construction, repair, remodeling or renovation, but only if the collapse occurs in the course of such construction, repair, remodeling or renovation.

This coverage does not increase the limit of liability applying to the covered property.

12. **Land**
If a sudden and accidental direct physical loss results in both a covered loss to the **dwelling**, other than the breakage of glass or safety glazing material, and a loss of land stability, **we** will pay up to $10,000 as an additional amount of insurance for repair costs associated with the land. This includes the costs required to replace, rebuild, stabilize or otherwise restore the land necessary to support that part of the **dwelling** sustaining the covered loss.

The **Section I—Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C** reference to earth movement does not apply to the loss of land stability provided under this Additional Protection.

13. **Lock Replacement**
When a key to a lock is stolen as part of a covered theft loss, **we** will pay under **Coverage A—Dwelling Protection** the reasonable expenses **you** incur to replace or re-key exterior door locks at the **residence premises** with locks or cylinders of like kind and quality. The limit of liability under this coverage following any one theft loss is $500.

This coverage does not increase the limit of liability that applies to the covered property.

Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C

A. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection** consisting of or caused by the following:

1. Freezing of:
   a) plumbing, fire protective sprinkler systems, heating or air conditioning systems;
   b) household appliances; or
   c) swimming pools, hot tubs and spas within the **dwelling**, their filtration and circulation systems;

   or discharge, leakage or overflow from within a), b) or c) above, caused by freezing, while the **building structure** is vacant, unoccupied or being constructed unless **you** have used reasonable care to:
   a) maintain heat in the **building structure**; or
   b) shut off the water supply and drain the system and appliances.

2. Freezing, thawing, pressure or weight of water, snow or ice, whether driven by wind or not. This exclusion applies to fences, pavements, patios, foundations, retaining walls, bulkheads, piers, wharves and docks. This exclusion also applies to swimming pools, hot tubs, spas, their filtration and circulation systems if the swimming pool, hot tub or spa is not located within a heated portion of the **dwelling**.

3. Seepage, meaning continuous or repeated seepage or leakage over a period of weeks, months, or years, of water, steam or fuel:
   a) from a plumbing, heating, air conditioning or automatic fire protection system or from within a domestic appliance; or
   b) from, within or around any plumbing fixtures, including, but not limited to shower stalls, shower baths, tub installations, sinks or other fixtures designed for the use of water or steam.

4. Collapse, except as specifically provided in **Section I—Additional Protection** under item 11, "Collapse."

5. Theft from **your residence premises** while **your dwelling** is under construction, or of materials and supplies for use in construction, until **your dwelling** is completed and occupied.

6. Vandalism or Malicious Mischief if **your dwelling** is vacant or unoccupied for more than 30 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

7. a) wear and tear, aging, marring, scratching, deterioration, inherent vice, or latent defect;
   b) mechanical breakdown;
   c) growth of trees, shrubs, plants or lawns whether or not such growth is above or below the surface of the ground;
   d) rust or other corrosion;
   e) contamination, including, but not limited to, the presence of toxic, noxious or hazardous gasses, chemicals, liquids, solids or other substances at the **residence premises** or in the air, land or water serving the **residence premises**;
   f) smog, smoke from the manufacturing of any controlled substance, agricultural smudging and industrial operations;
   g) settling, cracking, shrinking, bulging or expansion of pavements, patios, foundations, walls, floors, roofs or ceilings;
   h) insects, rodents, birds or domestic animals. **We** do cover the breakage of glass or safety glazing materials caused by birds; or
   i) seizure by government authority.

   If any of a) through h) cause the sudden and accidental escape of water or steam from a plumbing, heating or air conditioning system, household appliance or fire protective sprinkler system within **your dwelling**, **we** cover the direct physical damage caused by the water or steam. If loss to covered property is caused by water or steam not otherwise excluded, **we** will cover the cost of tearing out and replacing any part of **your dwelling** necessary to repair the system or appliance. This does not include damage to the defective system or appliance from which the water escaped.

8. Soil conditions, including, but not limited to, corrosive action, chemicals, compounds, elements, suspensions, crystal formations or gels in the soil.

B. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection** when:
   1) there are two or more causes of loss to the covered property; and
   2) the predominant cause(s) of loss is (are) excluded under items A.1 through A.8 above.

C. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** consisting of or caused by the following:

1. Flood, including, but not limited to, surface water, waves, tidal water or overflow of any body of water, or spray from any of these, whether or not driven by wind.

2. Water or any other substance that:
   a) backs up through sewers or drains; or
   b) overflows from a sump pump, sump pump well or other system designed for the removal of subsurface water which is drained from a foundation area of a structure.

3. Water or any other substance on or below the surface of the ground, regardless of its source. This includes water or any other substance which exerts pressure on, or flows, seeps or leaks through any part of the **residence premises**.

   We do cover sudden and accidental direct physical loss caused by fire, explosion or theft resulting from items 1 through 3 listed above.

4. Earth movement of any type, including, but not limited to, earthquake, volcanic eruption, lava flow, landslide, subsidence, mudflow, pressure, sinkhole, erosion, or the sinking, rising, shifting, creeping, expanding, bulging, cracking, settling or contracting of the earth. This exclusion applies whether or not the earth movement is combined with water.

   We do cover sudden and accidental direct physical loss caused by fire, explosion, theft or breakage of glass or safety glazing materials resulting from earth movement.

5. Enforcement of any building codes, ordinances or laws regulating the construction, reconstruction, maintenance, repair, placement or demolition of any **building structure**, other structure or land at the **residence premises**.

   We do cover sudden and accidental direct physical loss to covered property caused by actions of civil authority to prevent the spread of fire.

6. The failure by any **insured person** to take all reasonable steps to save and preserve property when the property is endangered by a cause of loss **we** cover.

7. Any substantial change or increase in hazard, if changed or increased by any means within the control or knowledge of an **insured person**.

8. Intentional or criminal acts of or at the direction of any **insured person**, if the loss that occurs:
   a) may be reasonably expected to result from such acts; or
   b) is the intended result of such acts.

   This exclusion applies regardless of whether or not the **insured person** is actually charged with, or convicted of, a crime.

9. Weather Conditions that contribute in any way with a cause of loss excluded under **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C** to produce a loss.

10. Planning, Construction or Maintenance, meaning faulty, inadequate or defective:
    a) planning, zoning, development, surveying, siting;
    b) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
    c) materials used in repair, construction, renovation or remodeling; or
    d) maintenance

    of property whether on or off the **residence premises** by any person or organization.

11. Vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

D. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** when:
   1) there are two or more causes of loss to the covered property; and
   2) the predominant cause(s) of loss is (are) excluded under items C.1. through C.11 above.

E. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** consisting of or caused by mold, fungus, wet rot, dry rot or bacteria. This includes any loss which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.

   This exclusion applies regardless of whether mold, fungus, wet rot, dry rot or bacteria arises from any other cause of loss, including but not limited to a loss involving water, water damage or discharge, which may otherwise be covered by this policy, except as specifically provided in **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**.

F. **We** do not cover loss to the property described in **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** consisting of or caused by the following. These exclusions apply regardless of whether any other cause contributed concurrently or in any sequence to produce the loss:
   1. Nuclear action, meaning nuclear reaction, discharge, radiation or radioactive contamination, or any consequence of any of these. Loss caused by nuclear action is not considered loss by fire, explosion or smoke.

      We do cover sudden and accidental direct physical loss by fire resulting from nuclear action.

   2. War or warlike acts, including, but not limited to, insurrection, rebellion or revolution.

Section I Conditions

1. **Deductible**
   We will pay when a covered loss exceeds the applicable deductible shown on the Policy Declarations. **We** will then pay only the excess amount, unless **we** have indicated otherwise in this policy.

2. **Insurable Interest and Our Liability**
   In the event of a covered loss, **we** will not pay for more than an **insured person's** insurable interest in the property covered, nor more than the amount of coverage afforded by this policy.

3. **What You Must Do After A Loss**
   In the event of a loss to any property that may be covered by this policy, **you** must:
   a) immediately give **us** or **our** agent notice. Report any theft to the police as soon as possible. If the loss involves a credit card, debit or automated teller machine card, or bank fund transfer card, give notice to the company or bank that issued the card.
   b) protect the property from further loss. Make any reasonable repairs necessary to protect it. Keep an accurate record of any repair expenses.
   c) separate damaged from undamaged personal property. Give **us** a detailed list of the damaged, destroyed or stolen property, showing the quantity, cost, actual cash value and the amount of loss claimed.
   d) give **us** all accounting records, bills, invoices and other vouchers, or certified copies, which **we** may reasonably request to examine and permit **us** to make copies.
   e) produce receipts for any increased costs to maintain **your** standard of living while

you reside elsewhere, and records supporting any claim for loss of rental income.

f) as often as **we** reasonably require:
   1) show **us** the damaged property.
   2) at **our** request, submit to examinations under oath, separately and apart from any other person defined as **you** or **insured person** and sign a transcript of the same.
   3) produce representatives, employees, members of the **insured person's** household or others to the extent it is within the **insured person's** power to do so; and

g) within 60 days after the loss, give **us** a signed, sworn proof of the loss. This statement must include the following information:
   1) the date, time, location and cause of loss;
   2) the interest **insured persons** and others have in the property, including any encumbrances;
   3) the actual cash value and amount of loss for each item damaged, destroyed or stolen;
   4) any other insurance that may cover the loss;
   5) any changes in title, use, occupancy or possession of the property that have occurred during the policy period;
   6) at **our** request, the specifications of any damaged **building structure** or other structure; and
   7) evidence supporting any claim under the Credit Card, Debit or Automated Teller Machine Card, Bank Fund Transfer Card, Check Forgery and Counterfeit Money protection. State the cause and amount of loss.

We have no duty to provide coverage under this section if **you**, an **insured person**, or a representative of either fail to comply with items a) through g) above, and this failure to comply is prejudicial to **us**.

4. **Our Settlement Options**
In the event of a covered loss, **we** have the option to:

a) repair, rebuild or replace all or any part of the damaged, destroyed or stolen property with property of like kind and quality within a reasonable time; or
b) pay for all or any part of the damaged, destroyed or stolen property as described in Condition 5 "How We Pay For A Loss."

Within 30 days after **we** receive **your** signed, sworn proof of loss **we** will notify **you** of the option or options **we** intend to exercise.

5. **How We Pay For A Loss**
Under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection** and **Coverage C—Personal Property Protection,** payment for covered loss will be by one or more of the following methods:

a) Special Payment. At **our** option, **we** may make payment for a covered loss before **you** repair, rebuild or replace the damaged, destroyed or stolen property if:
   1) the whole amount of loss for property covered under **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection,** without deduction for depreciation, is less than $2,500 and if the property is not excluded from the Building Structure Reimbursement provision, or;
   2) the whole amount of loss for property covered under **Coverage C—Personal Property Protection,** without deduction for depreciation, is less than $2,500 and if **your** Policy Declarations shows that the Personal Property Reimbursement provision applies, and the property is not excluded from the Personal Property Reimbursement provision.

b) Actual Cash Value. If **you** do not repair or replace the damaged, destroyed or stolen property, payment will be on an actual cash value basis. This means there may be a deduction for depreciation. Payment will not exceed the Limit Of Liability shown on the Policy Declarations for the coverage that applies to the damaged,

destroyed or stolen property, regardless of the number of items involved in the loss.

You may make claim for additional payment as described in paragraph c) and paragraph d) below, if applicable, if **you** repair or replace the damaged, destroyed or stolen covered property within 180 days of the actual cash value payment.

c) Building Structure Reimbursement. Under **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection, we** will make additional payment to reimburse **you** for cost in excess of actual cash value if **you** repair, rebuild or replace damaged, destroyed or stolen covered property within 180 days of the actual cash value payment. This additional payment includes the reasonable and necessary expense for treatment or removal and disposal of contaminants, toxins or pollutants as required to complete repair or replacement of that part of a **building structure** damaged by a covered loss. This additional payment shall not include any amounts which may be paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**, and shall not be payable for any losses excluded in **Section I—Your Property**, under **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C, section E.**

Building Structure Reimbursement will not exceed the smallest of the following amounts:

1) the replacement cost of the part(s) of the **building structure(s)** for equivalent construction for similar use on the same **residence premises**;
2) the amount actually and necessarily spent to repair or replace the damaged **building structure(s)** with equivalent construction for similar use on the same **residence premises**; or
3) the Limit Of Liability applicable to the **building structure(s)** as shown on the Policy Declarations for **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection**, regardless of the number of **building structures** and structures other than **building structures** involved in the loss.

If **you** replace the damaged **building structure(s)** at an address other than shown on the Policy Declarations through construction of a new structure or purchase of an existing structure, such replacement will not increase the amount payable under Building Structure Reimbursement described above. The amount payable under Building Structure Reimbursement described above does not include the value of any land associated with the replacement structure(s).

Building Structure Reimbursement payment will be limited to the difference between any actual cash value payment made for the covered loss to **building structures** and the smallest of 1), 2) or 3) above.

Building Structure Reimbursement will not apply to:

1) property covered under **Coverage C—Personal Property Protection**;
2) property covered under **Coverage B—Other Structures Protection** that is not a **building structure**;
3) wall-to-wall carpeting, fences, awnings and outdoor antennas whether or not fastened to a **building structure**; or
4) land.

Payment under a), b), or c) above will not include any increased cost due to the enforcement of building codes, ordinances or laws regulating the construction, reconstruction,

maintenance, repair, relocation or demolition of **building structures** or other structures.

d) Personal Property Reimbursement. Under **Coverage C—Personal Property Protection, we** will make additional payment to reimburse **you** for cost in excess of actual cash value if **you** repair, rebuild or replace damaged, destroyed or stolen covered personal property or wall-to-wall carpeting within 180 days of the actual cash value payment.

Personal Property Reimbursement payment will not exceed the smallest of the following amounts:

1) the amount actually and necessarily spent to repair or replace the property with similar property of like kind and quality;
2) the cost of repair or restoration; or
3) the Limit Of Liability shown on the Policy Declarations for **Coverage C—Personal Property Protection**, or any special limit of liability described in the policy, regardless of the number of items of personal property involved in the loss.

Personal Property Reimbursement will be limited to the difference between any actual cash value payment made for the covered loss to personal property and the smallest of 1), 2) or 3) above.

Personal Property Reimbursement will not apply to:

1) property insured under **Coverage A—Dwelling Protection** and **Coverage B—Other Structures Protection**, except wall-to-wall carpeting;
2) antiques, fine arts, paintings, statuary and similar articles which, by their inherent nature, cannot be replaced;
3) articles whose age or history contribute substantially to their value. This includes, but is not limited to, memorabilia, souvenirs and collector's items;
4) property that was obsolete or unusable for the originally intended purpose because of age or condition prior to the loss; or
5) motorized land vehicles used solely for the service of the **insured premises** and not licensed for use on public roads. This does not include motorized land vehicles designed for assisting the disabled.

6. **Our Settlement Of Loss**
We will settle any covered loss with **you** unless some other person or entity is named in the policy. **We** will settle within 60 days after the amount of loss is finally determined. This amount may be determined by an agreement between **you** and **us**, an appraisal award or a court judgment.

7. **Appraisal**
If **you** and **we** fail to agree on the amount of loss, either party may make written demand for an appraisal. Upon such demand, each party must select a competent and impartial appraiser and notify the other of the appraiser's identity within 20 days after the demand is received. The appraisers will select a competent and impartial umpire. If the appraisers are unable to agree upon an umpire within 15 days, **you** or **we** can ask a judge of a court of record in the state where the **residence premises** is located to select an umpire.

The appraisers shall then determine the amount of loss, stating separately the actual cash value and the amount of loss to each item. If the appraisers submit a written report of an agreement to **you** and to **us** the amount agreed upon shall be the amount of loss. If they cannot agree, they will submit their differences to the umpire. A written award agreed upon by any two will determine the amount of loss.

Each party will pay the appraiser it chooses, and equally bear expenses for the umpire and all other appraisal expenses.

8. **Abandoned Property**
We are not obligated to accept any property or responsibility for any property abandoned by an **insured person.**

9. **Permission Granted To You**
a) The **residence premises** may be vacant or unoccupied for any length of time, except where a time limit is indicated in this policy for specific perils. A **building structure** under construction is not considered vacant.
b) **You** may make alterations, additions or repairs, and **you** may complete structures under construction.

10. **Our Rights To Recover Payment**
When **we** pay for any loss, an **insured person's** right to recover from anyone else becomes **ours** up to the amount **we** have paid. An **insured person** must protect these rights and help **us** enforce them. **You** may waive **your** rights to recover against another person for loss involving the property covered by this policy. This waiver must be in writing prior to the date of the loss.

11. **Our Rights To Obtain Salvage**
We have the option to take all or any part of the damaged or destroyed covered property upon replacement by **us** or payment of the agreed or appraised value.

We will notify **you** of **our** intent to exercise this option within 30 days after **we** receive **your** signed, sworn proof of loss. If no signed, sworn proof of loss is requested by **us, we** will notify **you** of **our** intent to exercise this option within 60 days after the date **you** report the loss to **us.**

When **we** settle any loss caused by theft or disappearance, **we** have the right to obtain all or part of any property which may be recovered. An **insured person** must protect this right and inform **us** of any property recovered. **We** will inform **you** of **our** intent to exercise this right within 10 days of **your** notice of recovery to **us.**

12. **Action Against Us**
No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under a coverage to which **Section I Conditions** applies, unless:
a) there has been full compliance with all policy terms; and
b) the action is commenced within one year after the inception of loss or damage.

13. **Loss To A Pair Or Set**
If there is a covered loss to a pair or set, **we** may:
a) repair or replace any part of the pair or set to restore it to its actual cash value before the loss; or
b) pay the difference between the actual cash value of the pair or set before and after the loss.

14. **Glass Replacement**
Payment for loss to covered glass includes the cost of using safety glazing materials when required by law.

15. **No Benefit To Bailee**
This insurance will not benefit any person or organization who may be caring for or handling **your** property for a fee.

16. **Other Insurance**
If both this insurance and other insurance apply to a loss, **we** will pay the proportionate amount that this insurance bears to the total amount of all applicable insurance. However, in the event of a loss by theft, this insurance shall be excess over any other insurance that covers loss by theft.

17. **Property Insurance Adjustment**
When the Policy Declarations indicates that the Property Insurance Adjustment Condition applies, **you** agree that, at each policy anniversary, **we** may increase the Limit of Liability shown on the Policy Declarations for **Coverage A—Dwelling Protection** to reflect one of the following:
a) the rate of change in the index identified in the " Important Payment and Coverage

Information" section of the Policy Declarations. The limit of liability for **Coverage A—Dwelling Protection** for the succeeding premium period will be determined by changing the existing limit in proportion to the change in the Index between the time the existing limit was established and the time the change is made. The resulting amount will be rounded to the nearest $1000; or

b) the minimum amount of insurance coverage **we** are willing to issue for the succeeding premium period under **Coverage A—Dwelling Protection** for **your dwelling** and other property **we** cover under **Coverage A—Dwelling Protection.**

Any adjustment in the limit of liability for **Coverage A—Dwelling Protection** will result in an adjustment in the limit of liability for **Coverage B—Other Structures Protection** and **Coverage C—Personal Property Protection** in accordance with **our** manual of Rules and Rates.

Any adjustment in premium resulting from the application of this condition will be made based on premium rates in use by **us** at the time a change in limits is made.

We will not reduce the limit of liability shown on the Policy Declarations without **your** consent. **You** agree that it is **your** responsibility to ensure that each of the limits of liability shown on the Policy Declarations are appropriate for **your** insurance needs. If **you** want to increase or decrease any of the limits of liability shown on the Policy Declarations, **you** must contact **us** to request such a change.

18. **Mortgagee**
A covered loss will be payable to the Mortgagee(s) named on the Policy Declarations, to the extent of their interest and in the order of precedence. All provisions of **Section I** of this policy apply to these mortgagees.

We will:

a) protect the mortgagee's interest in a covered **building structure** in the event of an increase in hazard, intentional or criminal acts of, or directed by, an **insured person**, failure by any **insured person** to take all reasonable steps to save and preserve property after a loss, a change in ownership, or foreclosure if the mortgagee has no knowledge of these conditions; and

b) give the mortgagee at least 10 days notice if **we** cancel this policy.

The mortgagee will:

a) furnish proof of loss within 60 days after notice of the loss if an **insured person** fails to do so;

b) pay upon demand any premium due if an **insured person** fails to do so;

c) notify **us** in writing of any change of ownership or occupancy or any increase in hazard of which the mortgagee has knowledge;

d) give **us** the mortgagee's right of recovery against any party liable for loss; and

e) after a loss, and at **our** option, permit **us** to satisfy the mortgage requirements and receive full transfer of the mortgage.

This mortgagee interest provision shall apply to any trustee or loss payee or other secured party.

19. **Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**
In the event of a covered water loss under **Coverage A—Dwelling Protection, Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection, we** will pay up to $5,000 for mold, fungus, wet rot or dry rot **remediation.**

Remediation means the reasonable and necessary treatment, removal or disposal of mold, fungus, wet rot or dry rot as required to complete repair or replacement of property **we** cover under **Coverage A—Dwelling Protection, Coverage B—Other Structures**

Protection or **Coverage C—Personal Property Protection** damaged by a covered water loss, including payment for any reasonable increase in living expenses necessary to maintain **your** normal standard of living if mold, fungus, wet rot or dry rot makes **your residence premises** uninhabitable. **Remediation** also includes any investigation or testing to detect, measure or evaluate mold, fungus, wet rot or dry rot.

This Condition does not increase the limits of liability under **Coverage A—Dwelling Protection, Coverage B Other Structures Protection** or **Coverage C Personal Property Protection.**

Section II– Family Liability and Guest Medical Protection

Coverage X
Family Liability Protection

Losses We Cover Under Coverage X:
Subject to the terms, conditions and limitations of this policy, **we** will pay damages which an **insured person** becomes legally obligated to pay because of **bodily injury** or **property damage** arising from an **occurrence** to which this policy applies, and is covered by this part of the policy.

We may investigate or settle any claim or suit for covered damages against an **insured person**. If an **insured person** is sued for these damages, **we** will provide a defense with counsel of **our** choice, even if the allegations are groundless, false or fraudulent. **We** are not obligated to defend any suit or pay any claim or judgment after **we** have exhausted **our** limit of liability.

Coverage Y
Guest Medical Protection

Losses We Cover Under Coverage Y:
We will pay the reasonable expenses incurred for necessary medical, surgical, x-ray and dental services; ambulance, hospital, licensed nursing and funeral services; and prosthetic devices, eye glasses, hearing aids, and pharmaceuticals. These expenses must be incurred and the services performed within three years from the date of an **occurrence** causing **bodily injury** to which this policy applies, and is covered by this part of the policy.

Each person who sustains **bodily injury** is entitled to this protection when that person is:
1. on the **insured premises** with the permission of an **insured person**; or
2. off the **insured premises**, if the **bodily injury**:
   a) arises out of a condition on the **insured premises** or immediately adjoining ways;
   b) is caused by the activities of an **insured person** or a **residence employee**;
   c) is caused by an animal owned by or in the care of an **insured person**; or
   d) is sustained by a **residence employee**.

Additional Protection

We will pay, in addition to the limits of liability:
1. **Claim Expense**
   We will pay:
   a) all costs **we** incur in the settlement of any claim or the defense of any suit against an **insured person**;
   b) interest accruing on damages awarded until such time as **we** have paid, formally offered, or deposited in court the amount for which **we** are liable under this policy; interest will be paid only on damages which do not exceed **our** limits of liability;
   c) premiums on bonds required in any suit **we** defend; **we** will not pay bond premiums in an amount that is more than **our** limit of liability; **we** have no obligation to apply for or furnish bonds;
   d) up to $150 per day for loss of wages and salary, when **we** ask **you** to attend trials and hearings;
   e) any other reasonable expenses incurred by an **insured person** at **our** request.

2. **Emergency First Aid**
   We will pay reasonable expenses incurred by an **insured person** for first aid to other persons at the time of an accident involving **bodily injury** covered under this policy.

3. **Damage To Property Of Others**
At **your** request, **we** will pay up to $500 each time an **insured person** causes **property damage** to someone else's property. At **our** option, **we** will pay the cost to either repair or replace the property damaged by an **insured person**, without deduction for depreciation.

We will not pay for **property damage**:
a) to property covered under **Section I** of this policy;
b) to property intentionally damaged by an **insured person** who has attained the age of 13;
c) to property owned by or rented to an **insured person**, any tenant of an **insured person**, or any resident in **your** household; or
d) arising out of:
   1) past or present **business** activities;
   2) any act or omission in connection with a premises, other than an **insured premises**, owned, rented or controlled by an **insured person**; or
   3) the ownership or use of a motorized land vehicle, trailer, aircraft, hovercraft or watercraft.

Losses We Do Not Cover Under Coverage X and Coverage Y

A. **Losses We Do Not Cover Under Coverage X:**
1. **We** do not cover **bodily injury** to an **insured person** or **property damage** to property owned by an **insured person** whenever any benefit of this coverage would accrue directly or indirectly to an **insured person**.

2. **We** do not cover any **property damage** consisting of or caused by vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

3. **We** do not cover any **bodily injury** or **property damage** arising out of any liability statutorily imposed upon any **insured person** in any manner, consisting of or caused by vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

4. **We** do not cover any liability an **insured person** assumes arising out of any contract or agreement.

5. **We** do not cover **property damage** to property rented to, occupied or used by, or in the care of, an **insured person**. This exclusion does not apply if the **property damage** is caused by fire, explosion or smoke.

6. **We** do not cover any liability imposed upon any **insured person** by any governmental authority for **bodily injury** or **property damage** which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.

B. **Losses We Do Not Cover Under Coverage Y:**
1. **We** do not cover **bodily injury** to any **insured person** or regular resident of the **insured premises**. However, this exclusion does not apply to a **residence employee**.

2. **We** do not cover **bodily injury** to any person on the **insured premises** because of a **business** activity or professional service conducted there.

C. **Losses We Do Not Cover Under Coverage X and Coverage Y:**
Coverage under **Coverage X—Family Liability Protection** will be excluded for **bodily injury** and **property damage** and coverage under **Coverage Y—Guest Medical Protection** will be excluded for **bodily injury** as follows:

1. **We** do not cover any **bodily injury** or **property damage** intended by, or which may reasonably be expected to result from the intentional or criminal acts or

omissions of, any **insured person**. This exclusion applies even if:

a) such **insured person** lacks the mental capacity to govern his or her conduct;
b) such **bodily injury** or **property damage** is of a different kind or degree than intended or reasonably expected; or
c) such **bodily injury** or **property damage** is sustained by a different person than intended or reasonably expected.

This exclusion applies regardless of whether or not such **insured person** is actually charged with, or convicted of a crime.

2. **We** do not cover **bodily injury** to any person eligible to receive benefits required to be provided or voluntarily provided by an **insured person** under any worker's compensation, non-occupational disability or occupational disease law.

3. **We** do not cover **bodily injury** or **property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of aircraft.

   This exclusion does not apply to **bodily injury** to a **residence employee**.

4. **We** do not cover **bodily injury** or **property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any motor vehicle or trailer. However, this exclusion does not apply to:

   a) a motor vehicle in dead storage or used exclusively on an **insured premises**;
   b) any motor vehicle designed principally for recreational use off public roads, unless that vehicle is owned by an **insured person** and is being used away from an **insured premises**;
   c) a motorized wheel chair;
   d) a vehicle used to service an **insured premises** which is not designed for use on public roads and not subject to motor vehicle registration;
   e) a golf cart owned by an **insured person** when used for golfing purposes;
   f) a trailer of the boat, camper, home or utility type unless it is being towed or carried by a motorized land vehicle;
   g) lawn or garden implements under 40 horsepower;
   h) **bodily injury** to a **residence employee**.

5. **We** do not cover **bodily injury** or **property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of watercraft away from an **insured premises** if the watercraft:

   a) has inboard or inboard-outboard motor power of more than 50 horsepower;
   b) is a sailing vessel 26 feet or more in length;
   c) is powered by one or more outboard motors with more than 25 total horsepower;
   d) is designated as an airboat, air cushion, or similar type of watercraft; or
   e) is a personal watercraft, meaning a craft propelled by a water jet pump engine and designed to be operated by a person or persons sitting, standing or kneeling on the craft.

   This exclusion does not apply to **bodily injury** to a **residence employee**.

6. **We** do not cover **bodily injury** or **property damage** arising out of the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of hovercrafts. This exclusion does not

apply to **bodily injury** to a **residence employee**.

7. **We** do not cover **bodily injury** or **property damage** arising out of:
   a) the negligent supervision by any **insured person** of any person; or
   b) any liability statutorily imposed on any **insured person**

   arising from the ownership, maintenance, use, occupancy, renting, loaning, entrusting, loading or unloading of any aircraft, watercraft, hovercraft, motorized land vehicle or trailer which is not covered under **Section II** of this policy.

8. **We** do not cover any **bodily injury** which results in any manner from the discharge, dispersal, release or escape of vapors, fumes, acids, toxic chemicals, toxic gasses, toxic liquids, toxic solids, waste materials or other irritants, contaminants or pollutants.

   We do cover **bodily injury** which results from such discharge if the discharge is sudden and accidental.

9. **We** do not cover **bodily injury** or **property damage** arising out of the rendering of, or failure to render, professional services by an **insured person**.

10. **We** do not cover **bodily injury** or **property damage** arising out of the past or present **business** activities of an **insured person**.

    We do cover the occasional or part-time **business** activities of an **insured person** who is a student under 21 years of age who is self-employed and has no employees.

11. **We** do not cover **bodily injury** or **property damage** arising out of any premises, other than an **insured premises**, owned, rented or controlled by an **insured person**. This exclusion does not apply to **bodily injury** to a **residence employee**.

12. **We** do not cover **bodily injury** or **property damage** which, in whole or in part, arises out of, is aggravated by or results from mold, fungus, wet rot, dry rot or bacteria.

13. **We** do not cover **bodily injury** or **property damage** caused by war or warlike acts, including, but not limited to, insurrection, rebellion or revolution.

Section II Conditions

1. **What You Must Do After An Accidental Loss**
   In the event of **bodily injury** or **property damage, you** must do the following:
   a) Promptly notify **us** or **our** agent stating:
      1) **your** name and policy number;
      2) the date, the place and the circumstances of the loss;
      3) the name and address of anyone who might have a claim against an **insured person**;
      4) the names and addresses of any witnesses.
   b) Promptly send **us** any legal papers relating to the accident.
   c) At **our** request, an **insured person** will:
      1) cooperate with **us** and assist **us** in any matter concerning a claim or suit;
      2) help **us** enforce any right of recovery against any person or organization who may be liable to an **insured person**;
      3) attend any hearing or trial.
   d) Under the **Damage To Property Of Others** protection, give **us** a sworn statement of the loss. This must be made within 60 days after the date of loss. Also, an **insured person** must be prepared to show **us** any damaged property under that person's control.

Any **insured person** will not voluntarily pay any money, assume any obligations or incur any expense, other than for first aid to others

at the time of the loss as provided for in this policy.

2. **What An Injured Person Must Do—Coverage Y—Guest Medical Protection**
If someone is injured, that person, or someone acting for that person, must do the following:
a) Promptly give **us** written proof of the loss. If **we** request, this must be done under oath.
b) Give **us** written authorization to obtain copies of all medical records and reports.
c) Permit doctors **we** select to examine the injured person as often as **we** may reasonably require.

3. **Our Payment Of Loss—Coverage Y—Guest Medical Protection**
We may pay the injured person or the provider of the medical services. Payment under this coverage is not an admission of liability by **us** or an **insured person**.

4. **Our Limits Of Liability**
Regardless of the number of **insured persons**, injured persons, claims, claimants or policies involved, **our** total liability under **Coverage X—Family Liability Protection** for damages resulting from one **occurrence** will not exceed the Limit Of Liability shown on the Policy Declarations. All **bodily injury** and **property damage** resulting from continuous or repeated exposure to the same general conditions is considered the result of one **occurrence**. **Our** total liability under **Coverage Y—Guest Medical Protection** for all medical expenses payable for **bodily injury**, to any one person, shall not exceed the "each person" Limit Of Liability shown on the Policy Declarations.

5. **Bankruptcy**
We are not relieved of any obligation under this policy because of the bankruptcy or insolvency of an **insured person**.

6. **Our Rights to Recover Payment—Coverage X—Family Liability Protection**
When **we** pay any loss, an **insured person's** right to recover from anyone else becomes **ours** up to the amount **we** have paid. An **insured person** must protect these rights and help **us** enforce them.

7. **Action Against Us**
a) No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, unless there has been full compliance with all policy terms.
b) No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under **Coverage X—Family Liability Protection**, unless the obligation of an **insured person** to pay has been finally determined either by judgment against the **insured person** after actual trial, or by written agreement of the **insured person**, injured person and **us**, and the action against **us** is commenced within one year of such judgment or agreement.
c) No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under **Coverage Y—Guest Medical Protection**, unless such action is commenced within one year after the date the expenses for which coverage is sought were actually incurred.
d) No one may bring an action against **us** in any way related to the existence or amount of coverage, or the amount of loss for which coverage is sought, under **Section II—Additional Protection**, unless such action is commenced within one year after the date the claim expenses or emergency first aid expenses for which coverage is sought were actually incurred, or within one year after the date of loss to the property if coverage is being sought under the **Damage to Property of Others** provision.
e) No one shall have any right to make **us** a party to an action to determine the liability of an **insured person**.

8. **Other Insurance—Coverage X—Family Liability Protection**
This insurance is excess over any other valid and collectible insurance except insurance that is written specifically as excess over the limits of liability that apply to this policy.

Section III– Optional Protection

Optional Coverages You May Buy

The following Optional Coverages may supplement coverages found in **Section I** or **Section II** and apply only when they are indicated on the Policy Declarations. The provisions of this policy apply to each Optional Coverage in this section unless modified by the terms of the specific Optional Coverage.

1. **Coverage BC**
Building Codes
We will pay up to 10% of the amount of insurance on the Policy Declarations under **Coverage A—Dwelling Protection** to comply with local building codes after a covered loss to the **dwelling** or when repair or replacement results in increased cost due to the enforcement of any building codes, ordinances or laws regulating the construction, reconstruction, maintenance, repair or demolition of the **dwelling**.

2. **Coverage BP**
Increased Coverage On Business Property
The limitation on **business** property located on the **residence premises**, under **Coverage C—Personal Property Protection**, is increased to the amount shown on the Policy Declarations. This increased coverage includes property held as samples or for sale or delivery after sale, while the property is on the **residence premises.**

3. **Coverage DP**
Increased Coverage On Electronic Data Processing Equipment
The limitation on electronic data processing equipment under **Coverage C—Personal Property Protection,** and the recording or storage media used with that equipment, is increased to the amount shown on the Policy Declarations.

4. **Coverage F**
Fire Department Charges
The $500 limit applying to the fire department service charges under **Additional Protection** is increased to the amount shown on the Policy Declarations.

5. **Coverage G**
Loss Assessments
If **your residence premises** includes a **building structure** which is constructed in common with one or more similar buildings, and **you** are a member of, and subject to the rules of, an association governing the areas held in common by all building owners as members of the association, the **insured premises** means the **building structure** occupied exclusively by **your** household as a private residence, including the grounds, related structures and private approaches to them.

We will pay **your** share of any special assessments charged against all building owners by the association up to the Limit Of Liability shown on the Policy Declarations, when the assessment is made as a result of:
a) sudden and accidental direct physical loss to the property held in common by all building owners caused by a loss **we** cover under **Section I** of this policy; or
b) **bodily injury** or **property damage** covered under **Section II** of this policy.

Any reduction or elimination of payments for losses because of any deductible applying to the insurance coverage of the association of building owners collectively is not covered under this protection.

We will pay only when the assessment levied against the **insured person**, as a result of any one loss, for **bodily injury** or **property damage** exceeds $250 and then only for the amount of such excess. This coverage is not subject to any deductible applying to **Section I** of this policy.

In the event of an assessment, this coverage is subject to all the exclusions applicable to **Sections I** and **II** of this policy and the **Section I** and **II Conditions**, except as otherwise noted.

This coverage is excess over any insurance collectible under any policy or policies covering the association of building owners.

6. **Coverage J**
Extended Coverage On Jewelry, Watches and Furs
Coverage C—Personal Property Protection is extended to pay for sudden and accidental direct physical loss to the following property, subject to the provisions in this coverage:
a) jewelry, watches, gems, precious and semi-precious stones, gold, platinum; and
b) furs, including any item containing fur which represents its principal value.

The total amount of coverage and per item limit is shown on the Policy Declarations. This amount is not in addition to the amount of insurance applying to **Coverage C—Personal Property Protection**. However, in no event will coverage be less than would have applied in the absence of **Coverage J**.

We do not cover loss caused by or consisting of:
a) intentional or criminal acts of or at the direction of any **insured person**, if the loss that occurs:
   1) may be reasonably expected to result from such acts; or
   2) is the intended result of such acts.
b) wear and tear, gradual deterioration, inherent vice, insects or vermin;
c) nuclear action, meaning nuclear reaction, discharge, radiation or radioactive contamination or any consequence of any of these. Loss caused by nuclear action is not considered a loss by fire, explosion or smoke. **We** do cover sudden and accidental direct physical loss by fire resulting from nuclear action.
d) war or warlike acts, including, but not limited to, insurrection, rebellion or revolution.
e) failure by any **insured person** to take all reasonable steps to preserve property during and after a loss or when the property is endangered by a cause of loss **we** cover.

Any deductible shown on the Policy Declarations applicable to **Coverage C—Personal Property Protection**, also applies to a loss under this coverage.

7. **Coverage K**
Incidental Office, Private School Or Studio
a) The limits applying to property used or intended for use in a **business** under **Coverage C—Personal Property Protection** do not apply to equipment, supplies and furnishings used in a described office, private school or studio at **your residence premises**. This does not include electronic data processing equipment or the recording or storage media used with that equipment.

The **Coverage K** limits are shown on the Policy Declarations. The first limit applies to property on the **residence premises**. The second limit applies to property while away from the **residence premises**. These limits are not in addition to **Coverage C—Personal Property Protection, Limitations On Certain Personal Property** on property used or intended for use in a **business**. The increased coverage does not include property held for sample, sale or delivery after sale.

b) **Coverage X—Family Liability Protection** and **Coverage Y—Guest Medical Protection** are extended to cover a described office, private school or studio occupied by an **insured person**. The occupancy of the described property shall not be considered a **business**.

We do not cover **bodily injury** to:
a) any employee other than a **residence employee**; or

b) any person arising out of corporal punishment administered by or at the direction of an **insured person**.

8. **Coverage M**
Increased Coverage On Money
The limitation on money, bullion, bank notes, coins and other numismatic property, scrip, stored value cards and smart cards under **Coverage C—Personal Property Protection** is increased to the amount shown on the Policy Declarations.

9. **Coverage P**
Business Pursuits
Coverage X—Family Liability Protection and **Coverage Y—Guest Medical Protection** are extended to cover specified **business** pursuits of an **insured person**.

We do not cover:

a) **bodily injury** or **property damage** arising out of the **business** pursuits of an **insured person** when the **business** is owned or financially controlled by the **insured person**. This also means a partnership or joint venture of which an **insured person** is a partner or member;

b) **bodily injury** or **property damage** arising out of the rendering of or failure to render a professional service of any nature, other than teaching;

c) **bodily injury** to a fellow employee of an **insured person** arising out of and in the course of employment;

d) **bodily injury** or **property damage** when an **insured person** is a member of a teaching staff or faculty of any school or college and the **bodily injury** or **property damage** arises out of the maintenance or use of saddle animals, vehicles used with saddle animals, motorized land vehicles, hovercrafts, aircraft or watercraft when owned, hired or operated by an **insured person** or used for the purpose of instruction; or

e) **bodily injury** to any person arising out of corporal punishment administered by or at the direction of an **insured person** when an **insured person** is a member of the teaching staff or faculty of any school of instruction.

10. **Coverage S**
Increased Coverage On Securities
The $1,000 limitation on accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, checks, cashier's checks, traveler's checks, passports, securities, tickets, and stamps, including philatelic property, covered under **Coverage C—Personal Property Protection**, is increased to the amount shown on the Policy Declarations.

11. **Coverage SD**
Satellite Dish Antennas
Coverage C—Personal Property Protection is extended to pay for sudden and accidental direct physical loss to satellite dish antennas and their systems on **your residence premises**, subject to the provisions of **Coverage C—Personal Property Protection**.

The amount of coverage is shown on the Policy Declarations.

12. **Coverage ST**
Increased Coverage On Theft Of Silverware
The limitation on theft of goldware, silverware, pewterware and platinumware under **Coverage C—Personal Property Protection** is increased to the amount shown on the Policy Declarations.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Wisconsin Homeowners
Amendatory Endorsement – APC242-2

This endorsement amends your Homeowners Policy and Is in addition to all other amendatory endorsements which apply to this policy.

I. In the **General** section, the following changes are made:

A. The **Cancellation** provision is replaced by the following:

Cancellation
Your Right to Cancel:
You may cancel this policy by returning it to **us** or by notifying **us** in writing of the future date **you** wish to stop coverage.

Our Right to Cancel:
Allstate may cancel this policy by mailing notice to **you** at the mailing address shown on the Policy Declarations. When this policy has been in effect for less than 60 days, and it is not a renewal with **us**, **we** may cancel this policy for any reason.

When this policy has been in effect for 60 days or more, or if it is a renewal with **us**, **we** may cancel this policy for one or more of the following reasons:
1) non-payment of premium;

2) the policy was obtained by misrepresentation, fraud or concealment of material facts; or

3) there has been substantial change or increase in hazard in the risk **we** originally accepted.

If **we** cancel this policy, **we** will give **you** at least 10 days notice before the cancellation takes effect. **Our** mailing the notice of cancellation to **you** will be deemed to be proof of notice. Coverage under this policy will terminate on the effective date and hour stated on the cancellation notice. **Your** return premium, if any, will be calculated on a pro rata basis and refunded at the time of cancellation or as soon as possible. However, refund of unearned premium is not a condition of cancellation.

B. **Our** Right Not to Renew or Continue is replaced by the following:

Our Right Not to Renew or Continue:
We have the right not to renew or continue the policy beyond the current premium period. If **we** do not intend to continue or renew the policy, **we** will mail **you** notice at least 60 days before the end of the premium period. **Our** mailing notice of non-renewal to **you** will be deemed proof of notice.

Any unearned premium amounts under $2.00 will be refunded only upon **your** request.

C. **Misrepresentation, Fraud or Concealment** is replaced by the following:

If **we** determine that this policy is void, all premiums paid will be returned to **you** since there has been no coverage under this policy.

We do not cover any loss or occurrence in which any **insured person** has concealed or misrepresented any material fact or circumstance and

1. **we** rely on the misrepresentation or affirmative warranty and the misrepresentation or affirmative warranty is either material or made with intent to deceive; or
2. the fact misrepresented or falsely warranted contributes to the loss.

D. **Action Against Us** is replaced by the following:

No one may bring an action against us unless there has been full compliance with all policy terms.

E. The following provision is added:

Conditional Reinstatement
If **we** mail a cancellation notice because **you** did not pay the required premium when due and **you** then tender payment by check, draft, or other remittance which is not honored upon presentation, **your** policy will terminate on the date and time shown on the cancellation notice and any notice we issue which waives the cancellation or reinstates coverage is void. This means that **We** will not be liable under this policy for claims or damages after the date and time indicated on the cancellation notice.

II. In **Section I—Your Property**, the following changes are made:

A. Under **Losses We Cover Under Coverage C**, item 8 is replaced with the following:

8. **Vandalism or Malicious Mischief.**
We do not cover vandalism or malicious mischief if **your dwelling** has been vacant or unoccupied for more than 60 days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

B. In **Additional Protection—Additional Living Expense** is replaced by the following:

Additional Living Expense
We will pay the reasonable and necessary increase in living expenses and the lost fair rental income for up to two weeks should civil authorities prohibit the use of the **residence premises** due to a loss at a neighboring premises caused by a loss **we** insure against. However, payments for increase in living expenses or **your** lost fair rental income expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions - Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

We will pay **your** lost fair rental income resulting from a covered loss under **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection**, less charges and expenses which do not continue, when a loss we cover under **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** makes the part of the **residence premises you** rent to others, or hold for rental, uninhabitable. **We** will pay for lost fair rental income for the shortest time required to repair or replace the part rented or held for rental but not to exceed 12 months. However, payments for **your** lost fair rental income expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

C. In **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C**, under Section A., item 6. is replaced by the following:

6. Vandalism or Malicious Mischief if **your dwelling** is vacant or unoccupied for more than 60 consecutive days immediately prior to the vandalism or malicious mischief. A **dwelling** under construction is not considered vacant or unoccupied.

D. In **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C**, under Section C., item 5., the following exception is added:

This exclusion does not apply when the **residence premises** is partially destroyed but ordered destroyed by fire ordinance or similar law.

E. In **Losses We Do Not Cover Under Coverage A, Coverage B and Coverage C**, under section C. item 8. is replaced by the following:

8. Intentional or criminal acts of or at the direction of any **insured person**, if the loss that occurs:
   a) may be reasonably expected to result from such acts; or
   b) is the intended result of such acts.

   This exclusion applies regardless of whether or not the **insured person** is actually charged with or convicted of a crime.

   We will not deny payment to an insured for a claim based on property loss or damage resulting from an act, or pattern, of abuse or domestic abuse if that insured did not cooperate in or contribute to the creation of the loss or damage and if the person who committed the act or act that caused the loss or damage is criminally prosecuted for the act or acts.

   Payment to the innocent insured may be limited in accordance with his or her ownership interest in the property or reduced by payments to a mortgagee or other holder of a secured interest.

F. In **Section I Conditions**, under **How We Pay For A Loss** provision, the following is added:

We agree that in the event of a total loss **we** will pay the limit of liability shown on the Policy Declarations for **Coverage A—Dwelling Protection.** This limit represents the total value of the **dwelling** on the **residence premises**, including structures attached to the **dwelling**.

G. In **Section I Conditions**, the following changes are made:

1. The **Our Settlement of Loss** provision is replaced by the following:

Our Settlement of Loss
We will settle any covered loss with **you**. **We** will settle with **you** unless another payee is named in the policy. **We** will settle within 30 days after the amount of loss is finally determined. This amount may be determined by an agreement among **you**, any other payee or entity named in the policy and **us**, an appraisal award or a court judgment.

2. In **Action Against Us**, paragraph b. is deleted.

III. In **Section II – Family Liability and Guest Medical Protection**, the following changes are made:

A. In **Losses We Do Not Cover Under Coverage X**, the second paragraph is amended as follows:

We may investigate or settle any claim or suit for covered damages against an **insured person**. If an **insured person** is sued for these damages, **we** will provide a defense with counsel of **our** choice, even if the allegations are groundless, false or fraudulent. **We** are not obligated to pay any claim or judgment after **we** have exhausted **our** limit of liability.

B. In **Losses We Do Not Cover Under Coverage X and Coverage Y**, Section C, **Losses We Do Not Cover Under Coverage X and Coverage Y**, the following is added to item 1.:

We will not deny payment to an insured for a claim based on property loss or damage resulting from an act, or pattern, of abuse or domestic abuse if that insured did not cooperate in or contribute to the creation of the loss or damage and if the person who committed the act or act that caused the loss or damage is criminally prosecuted for the act or acts.

Payment to the innocent insured may be limited in accordance with his or her ownership interest in the property or reduced by payments to a mortgagee or other holder of a secured interest.

C. In **Section II Conditions**, subsection (a) is replaced by the following to the **What You Must Do After An Accidental Loss** provision:

a) within 20 days following the loss, notify **us** or our agent in writing, stating:
   1) **your** name and policy number;
   2) the date, the place and the circumstance of the loss;
   3) the name and address of anyone who might have a claim against an **insured person**;
   4) the names and addresses of any witnesses.

Failure to give such notice within 20 days will not invalidate any claim made by an **insured person** if:
1) that person can show it was not reasonably possible to notify **us** or **our** agent within the specified time; or
2) that such notice was given as soon as reasonably possible.

D. The **Action Against Us** provision is replaced by the following:

No one may bring an action against **us** unless there has been full compliance with all policy terms.

IV. In **Section II—Optional Protection**, the **Coverage J—Extended Coverage on Jewelry, Watches and Furs,** the following provision is added to the third paragraph that begins, "We do not cover loss caused by or consisting of"

We do not cover loss caused by or consisting of:

a) intentional or criminal acts of or at the direction of any insured person, if the loss that occurs:
   1) may be reasonably expected to result from such acts; or
   2) is the intended result of such acts.

We will not deny payment to an insured for a claim based on property loss or damage resulting from an act, or pattern, of abuse or domestic abuse if that insured did not cooperate in or contribute to the creation of the loss or damage and if the person who committed the act or act that caused the loss or damage is criminally prosecuted for the act or acts.

Payment to the innocent insured may be limited in accordance with his or her ownership interest in the property or reduced by payments to a mortgagee or other holder of a secured interest.

All other policy terms and conditions apply.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Extended Protection Amendatory Endorsement – APC270

I. In **Section I—Your Property, Coverage C—Personal Property Protection** is revised as follows:

A. In **Property We Cover Under Coverage C**, item 1. is replaced by the following:

1. Personal property owned or used by an **insured person** anywhere in the world. When personal property is located at a residence other than the **residence premises**, coverage is limited to 10% of **Coverage C—Personal Property Protection**. This limitation does not apply to personal property in a newly acquired principal residence for the 30 days immediately after **you** begin to move property there, personal property in use at a temporary residence when a direct physical loss **we** cover makes **your residence premises** uninhabitable, or to personal property in student dormitory, fraternity or sorority housing.

B. The **Limitations On Certain Personal Property** provision is replaced by the following:

Limitations On Certain Personal Property:
Limitations apply to the following groups of personal property. If personal property can reasonably be considered a part of two or more of the groups listed below, the lowest limit will apply. These limitations do not increase the amount of insurance under **Coverage C—Personal Property Protection**. The total amount of coverage for each group in any one loss is as follows:

1. $200— Money, bullion, bank notes, coins and other numismatic property, scrip, stored value cards and smart cards.

2. $200— Property used or intended for use in a **business** while the property is away from the **residence premises**. This does not include electronic data processing equipment or the recording or storage media used with that equipment.

3. $500— Theft of any recording or storage media while such property is away from the **residence premises**, whether or not it is used with electronic data processing equipment or in a **business.** Recording or storage media includes, but is not limited to:
   a) tapes;
   b) CDs, DVDs and other discs;
   c) records;
   d) disks;
   e) reels;
   f) cassettes;
   g) cartridges; or
   h) programs.

4. $1,000— Trading cards, subject to a maximum amount of $250 per card.

5. $1,000— Accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, checks, cashier's checks, traveler's checks, passports, securities, tickets, and stamps, including philatelic property.

6. $1,000— Manuscripts, including documents stored on electronic media.

7. $1,000— Trailers not used with watercraft.

8. $2,000 - Watercraft, including their attached or unattached trailers, furnishings, equipment, parts, and motors.

9. $2,000— Property used or intended for use in a **business**, including property held as samples or for sale or delivery after sale, while the property is on the **residence premises**. This does not include electronic data processing equipment or the recording or storage media used with that equipment.

10. $2,000— Any motorized land vehicle parts, equipment or accessories not attached to or located in or upon any motorized land vehicle.

11. $10,000— Motorized land vehicles used solely for the service of the **insured premises** and not licensed for use on public roads. This does not include motorized land vehicles designed for assisting the disabled.

12. $3,000— Theft of firearms, their related equipment, and accessories.

13. $5,000— Theft of jewelry, watches, precious and semi-precious stones, gold other than goldware, silver other than silverware, pewter other than pewterware, platinum other than platinumware and furs, including any item containing fur which represents its principal value, subject to a maximum amount of $1,000 per item.

14. $2,500— Theft of goldware, silverware, pewterware and platinumware.

15. $10,000— Theft of tools and their accessories.

II. In **Section I—Your Property**, **Additional Protection** is revised as follows:

A. Item 1. **Additional Living Expense** is replaced by the following:

1. **Additional Living Expense**
   a) **We** will pay the reasonable increase in living expenses necessary to maintain **your** normal standard of living when a direct physical loss **we** cover under **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C Personal Property Protection** makes **your residence premises** uninhabitable. However, additional living expense due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss**.

Payment for additional living expense as a result of a covered loss under **Coverage A—Dwelling Protection**, **Coverage B—Other Structures Protection** or **Coverage C—Personal Property Protection** will be limited to the least of the following:

1) the time period required to repair or replace the property **we** cover, using due diligence and dispatch; or
2) if **you** permanently relocate, the shortest time for **your** household to settle elsewhere; or
3) 12 months.

b) **We** will pay the reasonable and necessary increase in living expenses for up to two weeks should civil authorities prohibit the use of the **residence premises** due to a loss at a neighboring premises caused by a loss **we** insure against. However, payments for increase in living expenses due to remediation of mold, fungus, wet rot or dry rot will not be paid in addition to any amounts paid or payable under **Section I, Conditions—Mold, Fungus, Wet Rot and Dry Rot Remediation as a Direct Result of a Covered Water Loss.**

These periods of time are not limited by the termination of this policy.

We do not cover any lost income or expense due to the cancellation of a lease or agreement.

No deductible applies to this protection.

B. Item 9. **Power Interruption** is replaced by the following:

9. **Power Interruption**
We will pay for loss to the contents of freezers and refrigerated units on the **residence premises** caused by the interruption of power which occurs off the **residence premises.** If a power interruption is known to an **insured person**, all reasonable means must be used to protect the contents of freezers and refrigerated units.

This coverage does not increase the limit of liability applying to the damaged property.

III. **Building Structure Reimbursement Extended Limits**
In **Section I—Conditions**, item 5., **How We Pay For A Loss**, under c) Building Structure Reimbursement **we** will replace item 3) if, at the time of the loss, **you** have met the following conditions:

A. Insure **your dwelling**, attached structures and detached **building structures** to 100% of replacement cost as determined by **our** estimate completed and based on the accuracy of information **you** furnished;

B. Have accepted the Property Insurance Adjustment Condition, agree to accept each annual adjustment in the **Coverage A—Dwelling Protection** limit of liability, and pay any additional premium charged; and

C. Notify **us** within 60 days of the start of any modifications that increase the aggregate value of **your dwelling**, attached structures and detached **building structures** at the **residence premises** by $5,000 or more, and pay any resulting additional premium due for the increase in value.

If, at the time of a covered loss, **you** meet all of the conditions in A., B., and C. above, then in **Section I—Conditions**, item 5., **How We Pay For A Loss**, under c) Building Structure Reimbursement, item 3) is replaced with:

3) 120% of the Limit Of Liability applicable to the **building structure(s)** as shown on the Policy Declarations for **Coverage A—Dwelling Protection** or **Coverage B—Other Structures Protection**, regardless of the number of **building structures** and structures other than **building structures** involved in the loss.

If, at the time of a covered loss, **you** fail to meet any of the conditions in A., B., and C. above, then in **Section I—Conditions**, item 5., **How We Pay For A Loss**, under c) Building Structure Reimbursement, item 3) remains:

3) the Limit Of Liability applicable to the **building structure(s)** as shown on the Policy Declarations for **Coverage A - Dwelling Protection** or **Coverage B—Other Structures Protection**, regardless of the number of **building structures** and structures other than **building structures** involved in the loss.

IV. In **Section II—Family Liability and Guest Medical Protection**, under **Additional Protection**, item 3 is replaced by the following:

3. **Damage To Property Of Others**
At **your** request, **we** will pay up to $1,000 each time an **insured person** causes **property damage** to someone else's property. At **our** option, **we** will pay the cost to either repair or replace the property damaged by an **insured person**, without deduction for depreciation.

We will not pay for **property damage**:
a) to property covered under **Section I** of this policy;
b) to property intentionally damaged by an **insured person** who has attained the age of 13;
c) to property owned by or rented to an **insured person**, any tenant of an **insured person**, or any resident in **your** household; or
d) arising out of:
   1) past or present **business** activities;
   2) any act or omission in connection with a premises, other than an **insured premises**, owned, rented or controlled by an **insured person**; or
   3) the ownership or use of a motorized land vehicle, trailer, aircraft, hovercraft or watercraft.

All other policy terms and conditions apply.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Scheduled Personal Property Endorsement – APC273

WHERE COVERAGE APPLIES

WE will cover the described property anywhere in the world. HOWEVER, COVERAGE ON FINE ARTS, FIREARMS AND BUSINESS PERSONAL PROPERTY IS LIMITED TO WITHIN THE UNITED STATES OF AMERICA AND CANADA.

SPECIAL PROVISIONS AND CONDITIONS:

1. Musical Instruments: **YOU** agree that none of the musical instruments covered will be played for remuneration unless this is indicated in the schedule and an additional premium paid.

2. Silverware: This classification includes silverware, silver-platedware, goldware, gold-platedware and pewterware. IT DOES NOT INCLUDE PENS, PENCILS, FLASKS, SMOKING IMPLEMENTS OR ACCESSORIES, OR ITEMS OF JEWELRY.

3. Fine Arts: **YOU** agree that covered fine arts will be packed and unpacked by competent packers.

4. Golfer's Equipment: Coverage on golfer's equipment owned by an **INSURED PERSON** includes golf clubs, golf clothing and equipment, BUT DOES NOT INCLUDE JEWELRY, WATCHES AND EQUIPMENT FOR SALE. Coverage also applies to **YOUR** other clothing while contained in any locker at the premises where **YOU** are playing golf. GOLF BALLS ARE COVERED ONLY FOR LOSS BY FIRE OR BY BURGLARY PROVIDED, IN THE CASE OF BURGLARY, THERE ARE VISIBLE MARKS OF FORCIBLE ENTRY INTO THE BUILDING, ROOM OR LOCKER CONTAINING THE GOLF BALLS.

5. Stamp and Coin Collections: Coverage on postage stamps includes due, envelope, official, revenue, match and medicine stamps, covers, locals, reprints, essays, proofs and other philatelic property an **INSURED PERSON** owns or controls. This includes the books, pages and mountings.

   Coverage on rare and current coins includes medals, paper money, bank notes, tokens or money and other numismatic property an **INSURED PERSON** owns or controls. This includes albums, containers, frames, cards, and display cabinets used with the coin collections.

6. Business Personal Property: This classification includes hand tools and portable power tools owned by an **INSURED PERSON** and used in that person's **BUSINESS. WE** WILL NOT COVER THE FOLLOWING PROPERTY:
   (A) SPARE PARTS, UNLESS ATTACHED TO THE COVERED PROPERTY OR SPECIFICALLY DESCRIBED IN THIS ENDORSEMENT;
   (B) ELECTRICAL APPLIANCES OR DEVICES, INCLUDING WIRING, DAMAGED DUE TO ELECTRICAL INJURY DISTURBANCES, CAUSED BY ARTIFICIALLY GENERATED ELECTRICAL CURRENTS, UNLESS FIRE FOLLOWS AND THEN ONLY LOSS OR DAMAGE CAUSED BY FIRE IS COVERED.

7. DOUBLE RECOVERY: **WE** WILL NOT PAY FOR ANY LOSS IF AN **INSURED PERSON** HAS COLLECTED FOR THE SAME LOSS FROM OTHERS.

NEWLY ACQUIRED PROPERTY
THIS PROVISION APPLIES ONLY TO THE JEWELRY, FURS, CAMERAS AND MUSICAL INSTRUMENTS CLASSES WHEN SIMILAR PROPERTY IS ALREADY DESCRIBED AND SCHEDULED IN THIS ENDORSEMENT.

WE WILL ONLY COVER NEWLY ACQUIRED PROPERTY OF AN **INSURED PERSON** FOR ITS ACTUAL VALUE PROVIDED **YOU** REPORT THE NEWLY ACQUIRED PROPERTY TO **US** WITHIN 30 DAYS OF ACQUISITION AND PAY THE ADDITIONAL PREMIUM FROM THE DATE ACQUIRED.

COVERAGE FOR EACH CLASS OF PROPERTY TO WHICH THIS PROVISION APPLIES WILL NOT EXCEED 25% OF THE AMOUNT OF INSURANCE FOR THAT CLASS OF PROPERTY OR $10,000, WHICHEVER IS LESS.

EXCLUSIONS—LOSSES WE DO NOT COVER

1. **WE** WILL NOT COVER LOSS OR DAMAGE TO THE DESCRIBED PROPERTY CAUSED BY WEAR AND TEAR, GRADUAL DETERIORATION, INSECTS, VERMIN OR INHERENT VICE.

2. **WE** WILL NOT COVER LOSS OR DAMAGE CAUSED BY NUCLEAR ACTION, MEANING NUCLEAR REACTION,DISCHARGE OR RADIATION OR RADIOACTIVITY, OR ANY CONSEQUENCE OF ANY OF THESE. LOSS BY NUCLEAR ACTION IS NOT CONSIDERED LOSS BY FIRE, EXPLOSION OR SMOKE. DIRECT LOSS BY FIRE RESULTING FROM NUCLEAR ACTION IS COVERED.

3. **WE** WILL NOT COVER LOSS OR DAMAGE CAUSED BY WAR OR WARLIKE ACTS, INCLUDING INSURRECTION, REBELLION, OR REVOLUTION.

4. If Fine Arts are covered, **WE** WILL NOT COVER:
   (A) LOSS OR DAMAGE CAUSED BY ANY REPAIRING, RESTORATION OR RETOUCHING PROCESS;
   (B) BREAKAGE OF ART GLASS WINDOWS, STATUARY, MARBLES, GLASSWARE, BRIC-A-BRAC, PORCELAINS AND SIMILAR FRAGILE ITEMS, UNLESS CAUSED BY FIRE, LIGHTNING, WINDSTORM, AIRCRAFT, THEFT OR ATTEMPTED THEFT, EARTHQUAKE, FLOOD, EXPLOSION, MALICIOUS DAMAGE, OR COLLISION, DERAILMENT OR OVERTURN OF CONVEYANCE, OR UNLESS COVERAGE FOR BREAKAGE IS INDICATED IN THE SCHEDULE AND AN ADDITIONAL PREMIUM IS PAID;
   (C) PROPERTY ON EXHIBITION AT FAIR GROUNDS OR ON ANY NATIONAL OR INTERNATIONAL EXPOSITION PREMISES, UNLESS OTHERWISE INDICATED IN THIS ENDORSEMENT.

5. If Sports Equipment, other than golf equipment, is covered, **WE** WILL NOT COVER LOSS OR DAMAGE CAUSED BY:
   (A) ANY REFINISHING, RENOVATING OR REPAIRING PROCESS; DAMPNESS OR EXTREMES OF TEMPERATURE; OR, RUST FOULING OR EXPLOSION OF FIREARMS;
   (B) BREAKAGE, MARRING, SCRATCHING, TEARING OR DENTING UNLESS CAUSED BY FIRE, THEFT OR ACCIDENTS TO CONVEYANCES; OR
   (C) DISHONEST ACTS OF AN **INSURED PERSON'S** EMPLOYEES OR PERSONS TO WHOM THE COVERED PROPERTY MAY BE ENTRUSTED OR RENTED.

6. If Stamp or Coin Collections are covered, **WE** WILL NOT COVER LOSS OR DAMAGE RESULTING FROM:
   (A) FADING, CREASING, DENTING, SCRATCHING, TEARING, THINNING, TRANSFER OF COLORS,INHERENT DEFECT, DAMPNESS, EXTREMES OF TEMPERATURE, GRADUAL DEPRECIATION, OR DAMAGE SUSTAINED FROM HANDLING OR WHILE BEING ACTUALLY WORKED ON;
   (B) MYSTERIOUS DISAPPEARANCE OF INDIVIDUAL STAMPS, COINS OR OTHER INDIVIDUAL ITEMS **WE** COVER UNLESS SPECIFICALLY DESCRIBED WITH A DEFINITE AMOUNT SET OPPOSITE THEIR DESCRIPTION, OR IF

NOT SPECIFICALLY DESCRIBED, UNLESS MOUNTED IN A VOLUME, AND THE PAGE TO WHICH THEY ARE ATTACHED IS ALSO LOST;

(C) THEFT FROM ANY UNATTENDED AUTOMOBILE EXCEPT WHILE BEING SHIPPED BY REGISTERED MAIL UNLESS COVERAGE FOR EXTENDED THEFT IS INDICATED IN THE SCHEDULE AND AN ADDITIONAL PREMIUM IS PAID;

(D) LOSS TO PROPERTY IN THE CUSTODY OF TRANSPORTATION COMPANIES; NOR SHIPMENTS BY MAIL UNLESS BY REGISTERED MAIL; OR

(E) LOSS TO ANY PROPERTY DESCRIBED IN THE SCHEDULE WHICH IS NOT AN ACTUAL PART OF A STAMP, COIN OR NUMISMATIC COLLECTION.

7. If Business Personal Property is covered, **WE** WILL NOT COVER LOSS OR DAMAGE RESULTING FROM:
   (A) FREEZING, CONTAMINATION, DAMPNESS OF ATMOSPHERE, EXTREMES OF TEMPERATURES, CORROSION OR RUST;
   (B) BREAKAGE, MARRING, SCRATCHING, CHIPPING OR DENTING, UNLESS CAUSED BY FIRE, EXPLOSION, THEFT, WINDSTORM, EARTHQUAKE, FLOOD, VANDALISM, MALICIOUS MISCHIEF, OR COLLISION, DERAILMENT OR OVERTURNING OF THE TRANSPORTING CONVEYANCE;
   (C) DISHONEST ACTS OF AN **INSURED PERSON'S** EMPLOYEES, WHETHER IN THE SCOPE OF EMPLOYMENT OR NOT, OR ANY PERSON TO WHOM THE PROPERTY IS ENTRUSTED (EXCEPT CARRIERS FOR HIRE);
   (D) MECHANICAL OR STRUCTURAL FAILURE OF TOOLS, OR BREAKDOWN, DEFECT OR FAILURE OF MACHINES OR POWER TOOLS;
   (E) THEFT OF TOOLS FROM AN UNATTENDED VEHICLE UNLESS THE VEHICLE IS SECURELY CLOSED AND LOCKED AND EVIDENCE OF FORCIBLE ENTRY IS VISIBLE OR THE ENTIRE VEHICLE IS STOLEN OR UNLESS THE INSURED PROPERTY IS IN THE CUSTODY OF A COMMON CARRIER;
   (F) ANY PROCESS OR SERVICE RESULTING IN SHRINKAGE, CHANGE IN COLOR, FINISH OR OTHER CHANGE IN THE DESCRIBED PROPERTY; OR
   (G) DISCLOSURE OF ANY INVENTORY SHORTAGE.

HOW WE SETTLE A LOSS

1. UNLESS OTHERWISE PROVIDED IN THIS ENDORSEMENT:
   (A) THE VALUE OF THE COVERED PROPERTY WILL BE DETERMINED AT THE TIME OF LOSS; AND
   (B) LOSS OR DAMAGE TO COVERED PERSONAL PROPERTY WILL BE SETTLED ON AN ACTUAL CASH VALUE BASIS. THIS MEANS THERE MAY BE A DEDUCTION FOR DEPRECIATION. PAYMENT WILL NOT EXCEED THE AMOUNT NECESSARY TO REPAIR OR REPLACE THE DAMAGED ITEMS(S) WITH PROPERTY OF LIKE KIND AND QUALITY, OR THE AMOUNT OF INSURANCE, WHICHEVER IS LESS.

2. Loss to covered Fine Arts will be settled as follows:
   (A) **WE** WILL PAY THE AMOUNT OF INSURANCE SHOWN FOR EACH DESCRIBED ITEM AND **WE** AGREE IT IS THE VALUE OF THE ITEM FOR THE PURPOSE OF LOSS SETTLEMENT.
   (B) IF THERE IS A LOSS TO A PAIR OR SET, **WE** AGREE TO PAY THE AMOUNT OF INSURANCE FOR THE DESCRIBED PAIR OR SET. **YOU** AGREE TO GIVE **US** THE REMAINING ITEM OR ITEMS.

3. Loss to covered Stamps and Coins will be settled as follows:
   (A) **WE** WILL PAY UP TO BUT NOT EXCEEDING THE AMOUNT OF INSURANCE SET OPPOSITE ANY ONE STAMP, COIN OR OTHER INDIVIDUAL ITEM IN CASE OF LOSS OR DAMAGE TO THAT ITEM.
   (B) Loss to covered property described as pairs, strips, blocks, series, sheets, covers, frames or cards will be settled as follows:
      (1) IF THERE IS A TOTAL LOSS, **WE** WILL PAY UP TO BUT NOT EXCEEDING THE AMOUNT OF INSURANCE SET OPPOSITE THE ITEM INVOLVED.

(2) IF THERE IS A PARTIAL LOSS, **WE** WILL PAY THE ACTUAL CASH MARKET VALUE OF THE WHOLE SET, LESS THE CASH MARKET VALUE OF THE REMAINDER AT THE TIME OF LOSS, BUT NOT MORE THAN THE AMOUNT OF INSURANCE SET OPPOSITE THE PROPERTY INVOLVED. HOWEVER, IF THE COVERED PROPERTY INVOLVED IS INSURED FOR LESS THAN THE CASH MARKET VALUE, **WE** WILL ONLY PAY THE PROPORTION THAT THE AMOUNT OF INSURANCE BEARS TO THE CASH MARKET VALUE.

(C) When coins or stamps are covered on a blanket basis, **WE** WILL PAY THE CASH MARKET VALUE AT THE TIME OF LOSS NOT EXCEEDING $1,000 ON ANY UNSCHEDULED NUMISMATIC PROPERTY, AND NOT MORE THAN $250 FOR ONE STAMP, COIN OR INDIVIDUAL ITEM, OR ANY PAIR, STRIP BLOCK, SERIES, SHEET, COVER, FRAME OR CARD.

(D) WE WILL NOT PAY FOR A GREATER PROPORTION OF ANY LOSS TO PROPERTY COVERED ON A BLANKET BASIS THAN THE TOTAL AMOUNT OF INSURANCE ON THE PROPERTY BEARS TO THE ACTUAL CASH MARKET VALUE OF THE PROPERTY AT THE TIME OF LOSS.

4. Loss to covered Business Personal Property will be settled as follows:
   (A) **WE** WILL PAY UP TO BUT NOT EXCEEDING THE AMOUNT OF INSURANCE SET OPPOSITE ANY INDIVIDUAL HAND OR POWER TOOL IN CASE OF LOSS OR DAMAGE TO THAT ITEM.
   (B) SUBJECT TO THE AMOUNT OF INSURANCE, **WE** will pay for loss to property described as a pair, set or parts as follows:
      (1) **WE** MAY ELECT TO REPAIR OR REPLACE ANY PART TO RESTORE THE PAIR OR SET TO ITS VALUE BEFORE THE LOSS; OR PAY THE DIFFERENCE BETWEEN THE ACTUAL CASH VALUE OF THE PROPERTY BEFORE AND AFTER THE LOSS.
      (2) IN THE CASE OF A LOSS TO ANY PART OF COVERED PROPERTY, CONSISTING OF SEVERAL PARTS WHEN COMPLETE, **WE** WILL PAY FOR THE ACTUAL CASH VALUE OF THE PART LOST OR DAMAGED.

POLICY CONDITIONS THAT APPLY

THIS ENDORSEMENT IS SUBJECT TO THE PROVISIONS AND CONDITIONS OF THE POLICY WHICH APPLY TO THE PERSONAL PROPERTY PROTECTION COVERAGE OTHER THAN:

1. Limits of Liability;
2. Losses We Do Not Cover Under Coverage **A**, Coverage B and Coverage C, Sections C—F;
3. Deductible;
4. Other Insurance; and
5. Any provisions or conditions that are inconsistent with this endorsement.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

LENDER'S LOSS PAYABLE ENDORSEMENT – APC275 (10-78)

1. Loss or damage, if any, under this policy shall be paid, as provided in this Endorsement, to the Payee named on the first page of this policy, its successors and assigns, hereinafter referred to as "the Lender," in whatever form or capacity its interests may appear and whether said interest be vested in said Lender in its individual or in its disclosed or undisclosed fiduciary or representative capacity, or otherwise, or vested in a nominee or trustee of said Lender.

2. The insurance under this policy, or any rider or endorsement attached thereto, as to the interest only of the Lender, its successors and assigns, shall not be invalidated nor suspended: (a) by any error, omission, or change respecting the ownership, description, possession, or location of the subject of the insurance or the interest therein, or the title thereto; (b) by the commencement of foreclosure proceedings or the giving of notice of sale of any of the property covered by this policy by virtue of any mortgage or trust deed; (c) by any breach of warranty, act, omission, neglect, or non-compliance with any of the provisions of this policy, including any and all riders now or hereafter attached thereto, by the named insured, the borrower, mortgagor, trustor, vendee, owner, tenant, warehouseman, custodian, occupant, or by the agents of either or any of them or by the happening of any event permitted by them or either of them, or their agents, or which they failed to prevent, whether occurring before or after the attachment of this endorsement, or whether before or after a loss, which under the provisions of this policy of insurance or of any rider or endorsement attached thereto would invalidate or suspend the insurance as to the named insured, excluding herefrom, however, any acts or omissions of the Lender while exercising active control and management of the property.

3. In the event of failure of the insured to pay any premium or additional premium which shall be or become due under the terms of this policy or on account of any change in occupancy or increase in hazard not permitted by this policy, this Company agrees to give written notice to the Lender of such non-payment of premium after sixty (60) days from and within one hundred and twenty (120) days after due date of such premium and it is a condition of the continuance of the rights of the Lender hereunder that the Lender when so notified in writing by this Company of the failure of the insured to pay such premium shall pay or cause to be paid the premium due within ten (10) days following receipt of the Company's demand in writing therefor. If the Lender shall decline to pay said premium or additional premium, the rights of the Lender under this Lender's Loss Payable Endorsement shall not be terminated before ten (10) days after receipt of said written notice by the Lender.

4. Whenever this Company shall pay to the Lender any sum for loss or damage under this policy and shall claim that as to the insured no liability therefor exists, this Company, at its option, may pay to the Lender the whole principal sum and interest and other indebtedness due or to become due from the insured, whether secured or unsecured, (with refund of all interest not accrued), and this Company, to the extent of such payment, shall thereupon receive a full assignment and transfer, without recourse, of the debt and all rights and securities held as collateral thereto.

5. If there be any other insurance upon the within described property, this Company shall be liable under this policy as to the Lender for the proportion of such loss or damage that the sum hereby insured bears to the entire insurance of similar character on said property under policies held by, payable to and expressly consented to by the Lender. Any Contribution Clause included in any Fallen Building Clause Waiver or any Extended Coverage

Endorsement attached to this contract of insurance is hereby nullified, and also any Contribution Clause in any other endorsement or rider attached to this contract of insurance is hereby nullified except Contribution Clauses for the compliance with which the insured has received reduction in the rate charged or has received extension of the coverage to include hazards other than fire and compliance with such Contribution Clause is made a part of the consideration for insuring such other hazards. The Lender upon the payment to it of the full amount of its claim, will subrogate this Company (pro rata with all other insurers contributing to said payment) to all of the Lender's rights of contribution under said other insurance.

6. This Company reserves the right to cancel this policy at any time, as provided by its terms, but in such case this policy shall continue in force for the benefit of the Lender for ten (10) days after written notice of such cancellation is received by the Lender and shall then cease.

7. This policy shall remain in full force and effect as to the interest of the Lender for a period of ten (10) days after its expiration unless an acceptable policy in renewal thereof with loss thereunder payable to the Lender in accordance with the terms of this Lender's Loss Payable Endorsement, shall have been issued by some insurance company and accepted by the Lender.

8. Should legal title to and beneficial ownership of any of the property covered under this policy become vested in the Lender or its agents, insurance under this policy shall continue for the term thereof for the benefit of the Lender but, in such event, any privileges granted by this Lender's Loss Payable Endorsement which are not also granted the insured under the terms and conditions of this policy and/or under other riders or endorsements attached thereto shall not apply to the insurance hereunder as respects such property.

9. All notices herein provided to be given by the Company to the Lender in connection with this policy and this Lender's Loss Payable Endorsement shall be mailed to or delivered to the Lender at its office or branch described on the first page of the policy.

Approved:
Board of Fire Underwriters of the Pacific,
California Bankers' Association,
Committee on Insurance.

Policy Endorsement

The following endorsement changes your policy. Please read this document carefully and keep it with your policy.

Guaranteed Renewal for Claims Endorsement – APC308

When the Policy Declarations indicates that the Guaranteed Renewal for Claims Endorsement applies, the following provision is added to the **General** section of the policy:

Guaranteed Renewal for Claims
When this Guaranteed Renewal for Claims provision is part of the policy, any decision by **us** not to renew or continue the policy will be made without regard to the number of claims reported under the policy. However, nothing in this provision shall limit **our** right not to renew or continue the policy for any other legally permissible reason(s), including the type(s) of claims reported under the policy.

All other policy terms and conditions apply.

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

FILED
McHenry County, Illinois
MAR 13 2015
KATHERINE M. KEEFE
Clerk of the Circuit Court

PAUL DULBERG, Plaintiff,	)	
vs.	)	No. 12 LA 178
DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, Individually, Defendants.	)	

COPY

NOTICE OF MOTION

TO: *VIA FIRST CLASS MAIL:*
Perry Accardo
Law Office of Steven A. Lihosit
200 N. LaSalle Street, Suite 2550
Chicago, IL 60601-1092

VIA CERTIFIED MAIL:
Paul Dulberg
4606 Hayden Court
McHenry, IL 60051

On **March 13, 2015 at 9:00 a.m.**, or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Thomas A. Meyer** or any judge sitting in his stead, in courtroom 201 in the Circuit Court of McHenry County in Woodstock, Illinois and shall then and there present **MOTION TO WITHDRAW AS COUNSEL**, a copy of which is hereby served upon you

AFFIDAVIT OF SERVICE

I certify that I served this Notice by mailing to whom it is directed at approximately 5:00 p.m. on March 5, 2015 in McHenry, IL and further that the statements set forth in this Affidavit of Service are true and correct.

Hans A. Mast, Attorney for Plaintiff

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
3416 West Elm Street
McHenry, IL 60050
815-344-3797
Attorney ID No. 06208070

7014 0150 0001 6391 9351

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	6.48
Restricted Delivery Fee (Endorsement Required)	
Total Po:	

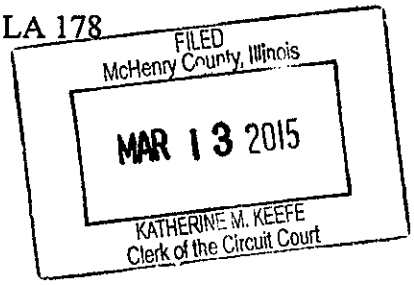
Postmark Here

Sent To: Paul Dulberg
Street, Apt. or PO Box: 4606 Hayden Court
City, State: McHenry, IL 60051

PS Form 3800, August 2006 — See Reverse for Instructions

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, Individually, Defendants.	)	No. 12 LA 178



MOTION TO WITHDRAW AS COUNSEL

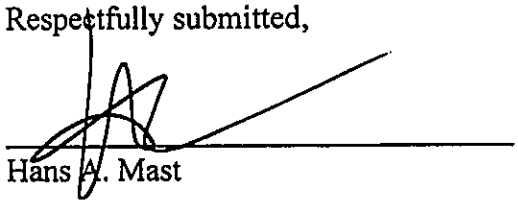
NOW COME the LAW OFFICES OF THOMAS J. POPOVICH, P.C., attorneys for the Plaintiff, PAUL DULBERG, and hereby move to withdraw as counsel for the Plaintiff in this cause pursuant to Supreme Court Rule 13. In support of said Motion, the attorneys hereby state as follows:

1. Communication between Plaintiff and Plaintiff's counsel has broken down resulting in an unworkable situation for both attorney and client.

2. By copy of this motion, Plaintiff is hereby advised that, to ensure notice of any further action in this cause, she should retain new counsel or within 21 days of the hearing of this motion and withdrawal of counsel, retain other counsel or file her own supplementary appearance with the clerk of the circuit court, stating an address at which service of notices or other papers may be had upon her.

WHEREFORE, the LAW OFFICES OF THOMAS J. POPOVICH, P.C. respectfully requests that this Court enter an Order granting the LAW OFFICES OF THOMAS J. POPOVICH, P.C. leave to withdraw as counsel for the Plaintiff, PAUL DULBERG.

Respectfully submitted,



Hans A. Mast

LAW OFFICES OF THOMAS J. POPOVICH
3416 West Elm Street
McHenry, IL 60050
(815) 344-3797
Attorney No. 06208070

IN THE CIRCUIT COURT

FOR THE 22ND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,
Plaintiff,
vs.) No. 12 LA 178
DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, individually,
Defendants.

The deposition of WILLIAM McGUIRE, taken in the above-entitled cause, before Paula Ann Erickson, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public, on March 20, 2013, at 3421 West Elm Street, McHenry, Illinois, at the approximate hour of 2:25 p.m.

REPORTED BY: PAULA A. ERICKSON

C.S.R. LICENSE NO. 084-003899

I N D E X

WITNESS PAGE

WILLIAM McGUIRE

BY MR. MAST..... 4

BY MR. BARCH..... 48

E X H I B I T S

DEPOSITION EXHIBIT PAGE

No. 1..... chain saw photo 46

No. 2..... chain saw manual 46

No. 3..... chain saw paperwork 46

APPEARANCES:

MR. HANS MAST
LAW OFFICES OF THOMAS J. POPOVICH
3416 W. Elm Street
McHenry, Illinois 60050
(815) 344-3797

Appeared on behalf of the Plaintiff.

MR. RONALD A. BARCH
CICERO, FRANCE, BARCH & ALEXANDER, PC
6323 East Riverside Boulevard
Rockford, Illinois 61114
(815) 226-7700

Appeared on behalf of the Defendants, Carolyn and Bill McGuire.

MR. PERRY A. ACCARDO
LAW OFFICE OF M. GERARD GREGOIRE
200 North LaSalle Street
Suite 2650
Chicago, Illinois 60601
(312) 558-9821

Appeared on behalf of the Defendant, David Gagnon.

* * * *

THE REPORTER: Sir, can you raise your right hand, please?

WILLIAM McGUIRE,

after being first duly sworn, deposeth and saith as follows:

EXAMINATION

BY MR. MAST:

Q. Please state your name, sir.

A. William McGuire.

MR. MAST: This is the discovery deposition of William McGuire, taken pursuant to notice, in accordance with the applicable rules.

BY MR. MAST:

Q. Mr. McGuire, what's your address?

A. 1016 West Elder Avenue, McHenry, Illinois 60051.

Q. Okay. And you live with Carolyn?

A. Yes.

Q. She is your wife?

A. Yes.

Q. How long have you been married?

A. I am not remembering very good. '91. Since '91.

Q. Okay. And you have always lived at that

address?
A. Let's see.
Q. I meant during your marriage.
A. I moved in in '89.
Q. At the Elder address?
A. Correct.
Q. Before you were married?
A. Yeah. Yes.
Q. Okay. Do you have any prior marriages?
A. No.
Q. Okay. Any children?
A. No.
Q. Okay. Okay. And Carolyn has three children, two daughters and a son, correct?
A. Yes.
Q. And the son is David Gagnon?
A. Yes.
Q. Okay. And have you known Dave -- Well, let me ask this: How long before you were married did you know --
A. I have known Dave since 1984.
Q. How did you meet Dave?
A. Through his mother.
Q. So you have known Carolyn since '84 as well?

A. Correct.
Q. Okay. Is that when you started kind of dating, that type of thing?
A. Yes.
Q. Where did you meet? Through what kind of --
A. Where did I meet Carolyn?
Q. How did you meet Carolyn? I'm sorry.
A. I met Carolyn at a marina.
Q. Okay. And are you retired?
A. Yes.
Q. What is your work -- Before you retired, what were you doing?
A. Carpenter.
Q. Okay. When did you retire?
A. '06.
Q. Is that because of the disability?
A. Yes.
Q. Okay. Are you -- What's your injury? What's your disability, back?
A. Correct.
Q. Okay. So you are not able to do heavy type work; is that correct?
A. No.
Q. Is that correct?

A. Yes.
Q. Okay. So you have some type of permanent chronic back problem?
A. Yes.
Q. All right. I am sure you have used a chain saw in your life, correct, or not?
A. No.
Q. So you never used a chain saw?
A. No.
Q. Okay. Although we have a chain saw here on the table that I am understanding you and Carolyn purchased --
A. Correct.
Q. -- the same year as Paul's accident at your house?
A. Yes.
Q. Okay. And I might be wrong but I am taking this from what Carolyn said but Carolyn said that sometime early 2011 before Paul's June 2011 accident you two purchased this chain saw that's here on the desk today?
A. Yes.
Q. And it's a red bodied chain saw and it's a gas chain saw, correct?

A. Yes.
Q. From Efco, E-F-C-O, MT, 3500. That's what I am reading off of it; is that right?
A. Yes.
Q. Yes?
A. Yes.
Q. Okay. Who purchased it?
A. I did.
Q. Okay. Where did you purchase it from?
A. Menards.
Q. And since you have never used the chain saw before and I am assuming because of your injury you weren't planning on using this one, why did you purchase it?
A. Well, I was wondering if we had a storm come through and some trees come down I would learn how to use it. I am a carpenter.
Q. Okay.
A. And I pick up things very quick but if I don't have to use it, I don't want to use it.
Q. Okay. So you got it in case?
A. Emergency, correct.
Q. Okay. And you got it for your use, not anybody else's?

A. Yes.
Q. For yours, I mean, you physically?
A. Personally. Personally in case we have trees come down or any of that problems.
Q. But for you to use, correct? Not for you to have somebody else use. You got it for you to use; is that correct?
A. Basically I bought it if one of the kids wanted to borrow it, I would let them borrow it.
Q. I understand the options there, but I am asking the reason you bought it is for you to use, not somebody else to use?
A. Yes.
Q. There is options, anybody can use it. I get that.
A. Yes.
Q. But you bought it for yourself to use, though, correct?
A. Yes.
Q. All right. How long have you known Paul Dulberg?
A. I probably met him in the '80s because David and him were probably friends and, you know, kids come over and come and go and that's probably when I ran

across him the first time.
Q. All right. Before -- I think Paul's chain saw accident at your house was sometime June 2011; is that your understanding?
A. Yeah.
Q. Okay. Did you know Paul to ever use a chain saw before his injury at your house in 2011?
A. Yes. He was on the property and David used the chain saw.
Q. Are we talking the day of his accident?
A. This is prior.
Q. Okay. Go ahead.
A. Because you were asking if Paul -- I ever saw him operate a chain saw.
Q. You are right.
A. And he was at the house. David cut down an apple tree in the backyard and I saw Paul use the chain saw on an apple -- the stump, the apple stump, to try to get it closer to the ground. That's the only time I ever seen him use the chain saw.
Q. Fair enough. Was that in the same year of his accident at your house?
A. That was prior.
Q. Same year, though?

A. You know, probably -- I believe it was. I believe it was.
Q. Carolyn seemed to think the apple tree cutting was sometime in May of that year.
A. You know, she was probably right. It was before the pine tree.
Q. The evergreens or --
A. Well, I call them evergreen, pine tree.
Q. Same thing. Right. Before Paul's accident?
A. Yes.
Q. Right. Okay. So according to you, sometime in May 2011 when the apple tree was being cut down by Dave, Paul was also there to help and he used it to cut the stump?
A. The stump, the tree stump.
Q. Down lower?
A. Yes.
Q. Okay. And that's the only time -- So the only time you ever saw Paul use a chain saw before his accident in June 2011 was the one time at your house when he cut the stump off that apple tree?
A. Yes. He got the stump lower to the ground.
Q. Is that true? What I just said, is that true? I will say it again because you interrupted me

by adding on. Let's just answer what my question is.
Okay. My question is: The only time you ever seen Paul use a chain saw before his accident at your house in June 2011 was when he cut the stump down a little bit lower from the apple tree that was at your house in May of 2011?
A. Yes. The one David Gagnon cut down and he got the stump down lower, yes.
Q. Is what I just said true?
A. Yes. Yes.
Q. All right. Because you keep adding. Just answer -- If you don't understand my question, I will reword it, but try to answer what I am asking instead of adding on to what my question is, all right?
A. Okay.
Q. Got me?
A. Yeah.
Q. Did you see Paul doing anything with the use of the chain saw that you thought dangerous or unsafe before his accident?
A. No.
Q. Did you know that Paul -- and I'm not sure he was but I have to ask you. On the day of Paul's injury at your house in June 2011, you know, with Dave

there, do you know if Paul was ever even using the chain saw that day?

A. No.

Q. Do you know? You don't know?

A. I don't know if he was using the chain saw.

Q. That's what I am asking. Okay. Let me ask you a couple questions and today -- Well, let me ask it this way: When is the last time you spoke or saw Paul?

A. Probably three weeks ago in a grocery store.

Q. Did you speak to him or just see him?

A. Said hi.

Q. Did he say hi to you?

A. Yes.

Q. Was that it?

A. Correct.

Q. Did you see him carrying anything?

A. No.

Q. Okay. Did you see him do anything that would suggest he wasn't having problems with his arm that he cut in this chain saw accident at your house in 2011?

A. I did not see him doing anything but walking with his mother.

Q. Okay. Before Paul's accident in June 2011 at

your house, were -- did you consider him a friend, just a friend of your stepson's? How did you -- What was his status with you?

A. I considered him a friend of my stepson.

Q. Okay. So more of an acquaintance to you then? He wasn't somebody you'd socialize with outside of your son or something then?

A. Correct. If he wasn't around for my son, he didn't come around.

Q. So he wasn't like your buddy or anything?

A. No. No.

Q. Okay. So you were on good terms with him because he was obviously on good terms with your son before this accident occurred, right?

A. Yes.

Q. Did that change at all at least in your mind? Now Dave has spoken his peace so we don't even need to go into what Dave thinks, but in your mind has your feelings about Paul changed today versus before his injury at your house?

A. Yes.

Q. Okay. Good, bad, indifferent, what?

A. Well, I think he is a fibber.

Q. Okay. Fair enough. You are just being

honest. Okay. Why do you think he is a fibber?

A. You know, it should be cut and dry. I mean, it was an accident.

Q. Right. All right.

A. And that's all I know.

Q. Is it -- So I am reading into this, you can tell me if I am wrong, but is it because a lawsuit was filed; is that why?

A. Duh. Yes.

Q. Well, listen, I have to ask these questions, sir. Let me just go through this and make it easy for me, all right?

A. I'm sorry. Yes.

Q. You are making it hard. The fact that a lawsuit was filed and you are part of that lawsuit has that made you feel that he is a fibber?

A. Well --

Q. Or I am trying to find out.

A. Basically, since the lawsuit was filed and, you know, it wasn't cut and dry, I just probably don't want nothing to do with him now, so.

Q. Okay. So let me -- again, I have -- because some of the words you have used, I have to ask you about it. Do you feel he is a fibber or you just

don't like the fact that he filed a lawsuit against you?

A. I don't like the fact that he filed a lawsuit.

Q. Okay. So fibber meaning liar, you are not calling him a liar?

A. No. No. No. I'm sorry. Just because he filed a lawsuit.

Q. All right. So let me -- Again, I got to clear that up now. Do you believe in your mind that Paul is a fibber or a liar or don't you know?

A. I don't know.

Q. Okay. And I meant more about this lawsuit obviously. You don't know if he is lying or fibbing about the lawsuit because you don't know what happened, right?

A. Yes.

Q. Fair enough?

A. Yes.

Q. Okay. So you would not characterize him as a fibber for filing the lawsuit because you don't know if he is or not, true?

A. True. True. Yes.

Q. Before the accident occurred at your house in

June 2011, did you believe Paul was a credible, honest soul, person?

A. Yes.

Q. Okay. Did you have any reason to believe that he would fib prior to this accident?

A. No.

Q. Okay. All right. Have you heard -- Well, let me put Dave aside for a minute. Other than through Dave, have you heard that Paul was trying to make more out of this accident than was warranted other than -- I'm sorry. Let me --

MR. BARCH: Other than David or his attorney.

BY MR. MAST:

Q. Yeah. Other than through Dave or Dave's attorney or your attorney I guess, have you heard either from Paul or anybody else --

A. No.

Q. -- something to the effect that Paul was trying to make more out of this claim or accident than he should?

A. I have not heard nothing, no.

Q. Okay. Have you ever heard Paul suggest since his accident that he was trying to get people to say things to make this case worth more than it is?

A. No.

Q. Have you ever heard Paul since his accident or anybody -- Strike that.

Have you ever heard Paul since his accident ever suggest that he may never have to work again in his life or he is going to be able to be rich or anything like that, those issues, since this accident?

A. No.

Q. Okay. Have you heard those through Dave?

A. No.

Q. Dave has not even told you those things that Paul has said supposedly?

A. David has told me that he is not telling the truth.

Q. Okay.

A. That's what he told me.

Q. All right. So Dave told you Paul is not telling the truth about the accident.

A. Correct.

Q. But has Dave ever told you since the accident that Paul was trying to get him to lie or get him to say things so that they can retire?

A. Dave --

Q. Hold on. Let me finish the question -- so he can retire or make a lot of money out of this case? Has he said that?

A. No. Dave has never told me that.

Q. Okay. Okay. So I just want to make one other question on that just to make sure I covered everything.

Is it fair to say then other than maybe through your attorney you have never heard any allegation or suggestion whether by Paul or anybody else, Dave, Paul, anybody, that Paul was trying to make more out of this case than was justified and/or trying to get people to talk in favor of him in return for anything? Have you ever heard those things?

A. Other than David's comments or maybe my attorney a little bit, I haven't heard nobody else say a word.

Q. Okay. Including Paul, correct?

A. Oh, yeah.

Q. Okay. So what did Dave tell you in that regard?

A. Dave was saying that somehow the accident happened different than when the way Paul was describing it.

Q. Okay. And that's not quite what I asked so let me go back because we are going to get into that. Okay.

Let me -- My question was framed more to other than your attorney, have you heard from anyone including Paul, including Dave, anyone, that Paul was trying to get people to fabricate or lie to his favor in this case or to help him recover in this case?

A. No. Nobody told me that.

Q. Not Dave, not Paul, nobody, right?

A. The only thing I am saying is the question you are asking me is the same question I am saying is if it's got to pertain to the accident, David didn't agree with the way Paul stated the accident happened. Other than that --

Q. And I understand there is two versions of the accident. I understand that.

A. Correct.

Q. My question was different, though. My question was: Have you ever heard, other than through your attorney, that either Paul or Dave suggested that Paul was wanting people to lie for him or to fabricate anything?

A. Other than Dave and my attorney, no. Nobody

has told me anything about --
Q. I am including Dave in that. What did Dave tell you about Paul wanting him to fabricate or lie? Did he say that?
A. As far as Paul telling David to change the story or fabricate?
Q. Yeah. Did he do that?
A. David never mentioned it to me like that, no.
Q. Okay. So all right. So let me say the question again then. Is it fair to say, and putting your attorney's comments to you aside, okay, I am not asking you about your attorneys, but with regard to anybody else, you have never heard anyone suggest that Paul was trying to get Dave to lie, fabricate about this case, fair enough?
A. Yeah.
Q. Okay. You never heard that?
A. No.
Q. All right. As I understand it, there are two evergreens in your backyard back in June 2011 that you guys wanted cut down so you could put a storage shed back there, right?
A. Yes.
Q. Okay. And as I understand it, I don't

remember if it was you or your wife, but one of you asked Dave to do that work -- help with that work, right?
A. Yeah. Knock some lower branches down.
Q. Right. Who asked him to do that?
A. You know, I don't remember.
Q. Okay. It was either you or your wife?
A. Correct.
Q. And I think your wife said she was going to pay Dave something for his gas or whatever, right?
A. Basically, she'd give him a pair of pants. I don't know. They are always mothering the son, you know.
Q. Right. So what their arrangement was as far as money or --
A. Some kind of gift.
Q. Listen, you are going to make this last twice as long as -- I'd like to get you in and out of here as quick as possible but because I have to keep repeating the question, it's going to make it difficult so I am just trying to tell you we can probably get out of here real quick but I am going to have to keep backing up. So let me try to move forward but let me finish my question, okay?

A. Uh-huh.
Q. All right. So whatever the arrangement was between Carolyn and Dave as far as what he would get in return for doing this work, you don't know; fair enough?
A. Yes.
Q. Okay. And what was Dave's experience, if you know, in use of a chain saw before this accident with Paul at your house?
A. Stuff I have heard, a project he worked on through the course of me living there and physically seeing him prune the trees on the property with a chain saw.
Q. Okay.
A. That's about the extent of it.
Q. With a chain saw?
A. Correct.
Q. With your chain saw?
A. No. We didn't have it then.
Q. Okay. With his chain saw on his property?
A. No. Back when David lived at the house.
Q. With you?
A. On our property when David lived there --
Q. Right.

A. -- I don't know where he got the chain saw but he had a chain saw and he done some pruning on the property and that I have seen him do.
Q. Okay. Okay. And how often was that? Just the one time or was it repeatedly?
A. I would say a handful of times.
Q. Okay. Over the course of several years?
A. Yeah. Correct.
Q. And that was while he was living with you?
A. Yeah.
Q. And that's the only time you have known him to use a chain saw other than in 2011?
A. This goes back in, you know, in say in the mid '80s, in the '90s, you know, whenever he would go around the yard and prune stuff up with the chain saw.
Q. Did you have a chain saw at the house at that point?
A. Not mine. You know, he might have borrowed one from a friend or he might have had one. I don't know.
Q. Okay. In 2011 other than the two evergreen trees he was going to take some of the branches down off of, did he do -- did Dave do any other work with the chain saw on your property in that year?

A. Cut the apple tree down.
Q. Okay. Anything else?
A. No.
Q. Okay.
A. You know, he did a little chain saw work. No. That was about it. That was about it that I remember.
Q. Okay. So the apple tree and the two evergreens, those are the only chain saw work he was doing at your house in 2011, correct?
A. That I remember. You know, I'm trying to remember because I know Paul took some scrap from the front yard from a maple tree.
Q. Yeah. Your wife said just to --
A. And --
Q. Go ahead.
A. And I don't remember if he used the chain saw to cut them pieces up a little further but I don't remember that.
Q. What your wife said was a tree company took that tree down.
A. Yes, they did.
Q. Let me finish. And left some stumps or sections and Paul and Dave cut those sections up so

Paul could have firewood. That's what she said.
A. I --
Q. You don't know?
A. I know Paul took the wood, the bulk of the wood.
Q. Who cut it up, you don't know?
A. No.
Q. Okay. So the only time you know that Dave used a chain saw on your property in 2011 was the two evergreens that he was cutting branches off at the time Paul was hurt and the one apple tree?
A. Yes.
Q. Okay. I think Paul's accident was June 28, 2011. Do you know that to be true or not?
A. You know, it sounds -- but I don't know.
Q. Do you know what day of the week it was?
A. No.
Q. Okay. You were retired so you would have not been working. Would you have been home at the time?
A. Yes.
Q. What were you doing at the time of Paul's injury?
A. I was in the house.
Q. Doing what?

A. Watching TV.
Q. Okay. Was that -- Do you know about what time Paul's accident occurred that day?
A. I don't remember.
Q. If you were watching TV when his accident occurred, would that have been pretty much what you were doing for most of the day prior to leading up to his accident or were you doing other things in the house?
A. I was in the house. I am trying to remember -- I might have walked around a little bit, you know, and then I was in the house.
Q. Did you ever go outside the house while Paul and Dave were in the backyard working?
A. No.
Q. So would it be fair to say that day of Paul's accident before his injury, you don't know who was doing what type of work, where, when or how?
A. That's true.
Q. Okay. And you never viewed at any time prior to Paul's injury what they were doing back there in the backyard, correct?
A. That's correct.
Q. Do you know what -- I know that you said Dave

was going to cut down some limbs from the two evergreens, right?
A. Yes.
Q. And I think Carolyn then said ultimately once the limbs were down, you were going to have the tree company come out and cut the big base of the tree down, right?
A. Yes.
Q. So Dave's task was really just to take the branches off the base of the tree, right?
A. Yeah.
Q. All the way up?
A. No. No. It was too high.
Q. So just up to a certain level?
A. Yes. Yes.
Q. Okay. How high, do you know?
A. You know, I want to say, I don't know, 15, 20 some feet. You know, I don't know. It was tall trees. That's all I am saying.
Q. And the limbs at the bottom are bigger than the limbs at the top, right?
A. Yes.
Q. How wide -- if you have an estimate, how wide are the limbs, the branches, coming off the evergreens

at the bottom of the trees?
A. Oh, they had to be -- in the base of it had to be, I don't know, four or five feet, something like that.
Q. How wide around?
A. Oh, wide around, inch and a half in diameter.
Q. Okay. All right. And do you have any idea of how many total branches needed to be cut down by Dave?
A. No.
Q. Okay. Was it more than 20?
A. Oh, yeah. Probably.
Q. There was a lot of them?
A. Probably, yes.
Q. Do you know when he started this work in relationship to the day of the accident?
A. The day before.
Q. Okay. Do you know how many hours he worked the day before?
A. Maybe an hour and a half, a couple hours I think. I really don't remember.
Q. Okay. So after working the day before, there would have been branches already on the ground, right?
A. Correct.

Q. And did you know Paul was coming over to help out?
A. No.
Q. Did you know who invited him over?
A. No.
Q. Okay. Did you even know he was on your property when --
A. Yes.
Q. Let me finish the question. Did you even know Paul was on your property by the time he got hurt?
A. Yes.
Q. How did you know he was on the property?
A. Because I seen him out in the yard. I petted his dog.
Q. You mean when he arrived?
A. Sometime through the course when he was there.
Q. Oh, because I asked you before if you ever saw them work during the process of their work and you said no, so.
A. I didn't see them working but I petted his dog.
Q. Oh, so you knew he was there because his dog

was there?
A. Yes.
Q. You didn't know he was there by seeing him?
A. Yes. I seen him on the property.
Q. All right. When he got there or during the course of the day?
A. I don't know when the exact time he arrived but I looked out in the yard and there was him and his dog.
Q. Okay. And did you go outside when you saw him there?
A. Maybe I was outside or something. I don't remember coming in and out but --
Q. This is what I am trying to understand, you said you never saw what they were doing.
A. Right.
Q. Paul and Dave, so I am assuming what did the dog come inside and that's when you petted him or when did you pet the dog?
A. They were working behind the garage and I didn't go behind the garage where they were working but if you come up to the back -- the back of the house, before you go around the garage, that's where I saw David, Paul and the dog. I went outside, petted the

dog, said hi to Paul and I went back in the house.
Q. All right. So you were only outside a minute or two?
A. Yeah. Not long.
Q. Okay. And you went out there specifically to pet the dog and say hi to them or for some other reason?
A. You know, I might have been taking out a bag of trash. I don't remember.
Q. Okay. And where you saw Paul and Dave, were they engaged in the tree work at the time or had they taken a break? What were they doing?
A. No. No. Just chitchatting.
Q. Okay. So this is before they began work that day, during the midst of their work, do you know?
A. I couldn't tell you.
Q. Okay. What time was this, do you know?
A. No. I don't remember.
Q. Do you know how long Paul was at the property already by the time you went back to pet the dog and say hi to him?
A. No.
Q. Okay. Where you saw them was that in the area that they would have been working to cut the tree

down --
A. No.
Q. -- or was that somewhere else?
A. It was in -- It was like by the driveway and the work was in the back of the -- towards the back of the yard. They were in the -- by the -- say around the back door of the back porch.
Q. Of the house.
A. Correct.
Q. Why were they there in relationship to the work they were doing? Do you have any idea?
A. No. I don't know what they were doing. They were standing there talking and the dog was sitting there.
Q. All right. Your wife was inside?
A. Yes.
Q. Did you know your wife ever to go outside while they were working that day?
A. She might have -- Go ahead.
Q. Did you know if your wife was ever outside that day of Paul's injury before his injury?
A. I don't keep track of her.
Q. So the answer is you don't know?
A. I don't know.

Q. Okay. All right. So when you went outside, you met up with them kind of at the rear of the house?
A. Yes.
Q. But they were not engaged in the work at the time, right?
A. Right.
Q. And you pet the dog and went back inside?
A. Yes.
Q. Okay. And that's the extent of your time outside the house prior to Paul's injury to your knowledge?
A. Yeah.
Q. Okay. So you don't know who was doing what that day, when and how, fair enough?
A. Yes. I don't know.
Q. As far as Dave and Paul, you don't know who was doing what -- whose tasks were what tasks or what they were doing, fair enough?
A. I don't know. I don't know.
Q. Is that fair enough then?
A. That's -- I don't know. Correct.
Q. Okay. What is your first knowledge or notice of Paul's accident then?
A. I heard some commotion and I ran outside and

they were getting in the vehicle to go to the -- to get patched up.
Q. To go to the hospital?
A. Yeah.
Q. Okay. So was Paul's arm already wrapped?
A. You know, I am trying to remember if my wife was getting him a towel or something like that. I don't know but all I know is they were beelining it for the -- a vehicle.
Q. Okay. So they were on their way from the house to the car?
A. Yeah. Yeah. So I might have caught a glimpse of them by the back door going to the -- I am trying to remember and then something about -- oh. Yeah. I did hear him say from the vehicle please watch my dog.
Q. Okay. Paul said that?
A. Yes. Yeah.
Q. It was Paul's dog?
A. Yes and I believe he was already in the vehicle when he yelled out the window that.
Q. Okay. So they were already basically gone --
A. Yeah.
Q. You didn't have a chance to talk to them,

right?
A. I did not talk to them.
Q. So by the time they were leaving for the hospital in the car that you saw, you didn't know what happened other than there must have been some injury?
A. Correct.
Q. Did you know who was injured?
A. Yes. Paul.
Q. How did you know that?
A. My wife said Paul is injured.
Q. Did she say how he got injured?
A. No.
Q. Okay. After he left, Paul left with Dave to the hospital, when did you next see Paul and Dave?
A. When they came back from the hospital.
Q. How many hours later?
A. It seemed like three, four.
Q. And did you speak to Paul and Dave?
A. Yeah.
Q. What did they say?
A. Well, they weren't talking too much. I asked Paul how he is feeling. He said I am a little sore and I asked David, you know, and Dave says not too good. You know, he says -- weren't in a very talkative mood.

Q. Not too good meaning Paul wasn't too good or what?
A. Well, Paul basically just came back and he -- I am trying to figure out how he got home. Maybe Mike --
Q. I am not evening asking that right now.
A. Okay.
Q. My question is: What did Paul and Dave say when they arrived home at the hospital? You said Paul said I am sore. Then David --
A. David really wasn't talking at all.
Q. Did either of them discuss how the accident occurred with the chain saw?
A. No. No.
Q. How long were they back at the house? Short -- Were they only there for a short period of time?
A. Yes. Yes.
Q. And did they both leave again?
A. I am trying to remember how he got home.
Q. I'm not asking how anybody got home. I am asking once they arrived home with Paul and Dave, they then left again or don't you know that?
A. You know, I don't remember if he came back to

our house or he came back to his house.
Q. Who is "he"? Who, Paul?
A. After the emergency room.
Q. Who?
A. Paul.
Q. Who is "he"? Okay.
A. I don't remember if he came back to our house or I don't remember if David drove him directly home to his house. I don't remember that. I am trying to remember that.
Q. Okay. All right. So when -- You would not have talked at least --
A. Wait a minute. I do remember now. He did come back to our house and I asked him how you doing and he says okay. And then --
Q. Who is "he"? I don't know who you are talking about.
A. Paul, the guy that got hurt.
Q. Paul said I am okay?
A. I asked him how are you doing? Paul said I am okay.
Q. Okay. Did he say anything else?
A. No.
Q. And then what did Dave say?

A. Dave didn't really talk.
Q. Okay. How long did they stay home?
A. A minute or something. He was collecting on the dog.
Q. Okay. Then what did they do?
A. Let's see. Mike McArtor picked the dog up. Maybe he took Paul, too. I don't remember.
Q. All right.
A. I don't remember.
Q. At least what Carolyn says is that Dave and Paul drove away to fill his prescription and then Dave came back alone.
A. You know, they could have. They could have.
Q. So you don't know that?
A. Right.
Q. Okay. All right. So by the time Dave returned home, whether Paul was with him or not, you don't know?
A. I don't know.
Q. Okay. Did Dave tell you -- now this is still the same day of the accident? Did Dave tell you how the accident occurred?
A. No.
Q. Has Dave ever described for you how the

accident occurred?
A. Yeah.
Q. When? First time.
A. Probably a day or so later.
Q. What -- So a day or so after the accident, Dave had a conversation with you?
A. Yeah.
Q. What did he say?
A. He says -- How did it go? He stuck his arm --
Q. Who is "he"? I need names so I know who you are talking about.
A. Hang on. Hang on. He said that Paul stuck his arm --
Q. Wait. Stop. Dave said that Paul --
MR. BARCH: Try to use names when you are referring to the people. That's all he is asking.
THE WITNESS: Okay. David said that when working with Paul, somehow Paul did something wrong and got his arm cut.
BY MR. MAST:
Q. Did he explain what he did wrong?
A. No. He really didn't.
Q. Did he say that he got his arm cut on the

chain saw?
MR. BARCH: "He," David?
MR. MAST: You got me.
THE WITNESS: David said he got his arm -- Paul got his arm cut on a chain saw.
BY MR. MAST:
Q. But David didn't specify how or what he did to get cut?
A. No. No.
Q. Okay. Did Dave ever specify to you at any other conversations about what Paul did and why it caused him to get cut by the chain saw?
A. No.
Q. So other than that first conversation with Dave where he just described generally that Paul did something wrong to get cut --
A. Yeah.
Q. -- did you have any other conversations with Dave about how the incident occurred?
A. No.
Q. Was that the only time?
A. Basically, yeah.
Q. Okay. Dave never got more specific than that?

A. No.
Q. All right. So any time you have talked to Dave it's always been, well, Paul did something wrong to get cut but he didn't specify anything more than that?
A. No.
Q. Is that correct?
A. Yes. He didn't want to talk about that, and he wasn't --
Q. Is that correct what I just said?
A. Correct.
Q. Okay. Did you ever talk to Paul about how the accident occurred?
A. No.
Q. Since the accident, have you ever talked to Paul?
A. Yes.
Q. How many times?
A. Maybe -- I am trying to think here. That may be once since the accident happened I have seen him in the grocery store.
Q. Is that the one you talked about earlier today?
A. Correct.

Q. Where you just said hi to him?
A. Correct.
Q. So since Paul's accident at your house with the chain saw, you have only spoken to him once and that was at the supermarket when you said hi to him and he said hi to you and that was it, right?
A. You know, I think he did come over. I don't remember. I think he did come over and I asked him, you know, how you doing or something like that and it was probably a week or so after.
Q. Okay. Let me go back then. My question was how many times have you spoken to Paul since the accident. Your answer is twice, right?
A. Probably twice.
Q. Okay. The first time is one week after the accident where Paul came over to the house, correct?
A. Yes.
Q. And who was present?
A. My wife.
Q. Okay. And Paul?
A. Yes.
Q. Okay. And what -- How long was Paul there?
A. A couple minutes with his dog.
Q. And what did Paul say to you or either of

you?
A. Well, you know, basically said I am going along. Everything is fine and, you know, my wife said how you doing and exchanged pleasantries and that was about it.
Q. Okay. Now, this is kind of what I'm wanting to find out. Paul has obviously -- at least to me obviously, has had some follow-up treatment and has had some difficulties with his arm because of this accident. Okay. Are you aware of that or not?
A. I have heard that, yes.
Q. Okay. So when you say a week afterwards that he said I am doing fine, are you saying that everything is great? He is not having --
A. Well, he seemed to be --
Q. Let me finish the question. Are you saying that he related to you that everything is great, he is having no problems or was he just trying to exchange pleasantries and say yeah, everything is okay?
MR. BARCH: I just object to the form of the question but go ahead if you understand it.
THE WITNESS: When the guy said he is fine, I thought he was healing well and meant I am doing fine.

BY MR. MAST:

Q. Okay. Did he describe for you what he meant by fine other than use the word --

A. No. No. No.

Q. -- other than use the word fine in response to your inquiry?

A. No. He didn't describe fine.

Q. Okay. Did he say I am pain free?

A. No.

Q. Did he say I am back to normal or anything in that regard?

A. No.

Q. Okay. Did he ever describe for you, again Paul, how the specifics of his accident occurred?

A. No.

Q. After that couple minutes at your house, he left and you only saw him one other time, that was at the supermarket where you exchanged hi's and that was it?

A. Yes. Yes.

Q. And that was the one you described earlier on in this deposition when you met him at the grocery store?

A. Yes.

Q. Okay. And you never spoken or talked to Paul other than those two times since the accident, correct?

A. Yeah.

Q. All right. I think I am -- Oh, wait. I wanted to ask you since I got these photographs, I might as well get these marked. I will just mark one of them because they are all the same.

(Whereupon, Deposition Exhibits 1, 2 and 3 were marked and dated.)

BY MR. MAST:

Q. Okay. I just marked three exhibits. The first one is a photograph we took today of the chain saw that's on the table in front of you, correct?

A. Uh-huh.

Q. Yes. I need you to verbalize the answer yes.

A. Yes.

Q. Okay. Is that the chain saw you have talked about over the course of your deposition today? That's the chain saw that Dave was using at the time of Paul's accident?

A. Yes.

Q. And that's the chain saw that you purchased

earlier in the year new from Menards, correct?

A. Yes.

Q. Okay. And Exhibit 2, is that a true and accurate copy of the manual for that same chain saw you purchased?

A. I believe so.

Q. And Exhibit 3 I believe is some additional paperwork that came with it as well as the receipt on the top, correct?

A. I assume so, yes.

Q. Well, take a look. I need you to make sure. Is that what that is? Just take a look through all of those documents in Exhibit 3 just to make sure those were all documents that came with the purchase of the chain saw.

A. Yes. They came with the chain saw.

Q. So all of the materials, Exhibit 2 and 3, all those materials came with the purchase of the chain saw, correct?

A. Yes.

Q. Okay. And they are all accurate copies of those documents, correct?

A. Yeah.

MR. MAST: Okay. Thank you. That's all I have.

MR. ACCARDO: I do not have any questions.

EXAMINATION

BY MR. BARCH:

Q. Just earlier when Mr. Mast was asking you about what you knew about Dave's experience with a chain saw, you mentioned that he did some pruning of trees. You saw him do that around your home?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. Then you also said you heard some stuff about him using chain saws?

A. Yes.

Q. And when you say you heard some stuff about him using chain saws, what were you referencing?

A. I was referencing to him through the course of the years when he was living there when I was living there when he was out helping friends and coming back home and saying something like I did some work for -- pruning some trees on some people's property or, you know, helping a friend out.

Q. Okay. So -- And to the extent David may have had some experience with a chain saw away from your home, you wouldn't know about that, you weren't there;

is that fair?
A. True.
Q. And at any time prior to Mr. Dulberg being injured on June 28, 2011, did you have any reason to be concerned about the manner or method that David was using the chain saw?
A. No. I had no concern.
Q. At any time that day or the day before, did you go out there and tell him how you wanted him to use the chain saw?
A. No.
Q. Did you tell him how you wanted him to go about tending to the trees, the pruning of the trees?
A. No.
Q. Is it fair to say that you left all the cutting and the decisions on what to do and how to do it up to David?
A. Yes.
Q. And with respect to what David and Paul may have talked about, if anything, that day, how they were going to go about using the chain saw, what they were going to do with respect to those trees, you weren't part of any of that?
A. True. I was not part of any of it.

MR. BARCH: That's all I have.
MR. ACCARDO: I don't have anything.
MR. MAST: All right.
MR. BARCH: We are going to -- We are just going to reserve. Carolyn is going to look at her transcript. I will give you a chance to read it, too, before it's final.
THE WITNESS: Okay.
(FURTHER DEPONENT SAITH NOT.)

IN THE CIRCUIT COURT
FOR THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,
Plaintiff,
vs. No. 12 LA 178
DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, individually,
Defendants.

I, WILLIAM McGUIRE, being first duly sworn, on oath say that I am the deponent in the aforesaid deposition taken on March 20, 2013; that I have read the foregoing transcript of my deposition, and affix my signature to same.

_____
WILLIAM McGUIRE

Subscribed and sworn to before me this _____ day of _____, 2019

_____
Notary Public

C E R T I F I C A T E

I, Paula Ann Erickson, Certified Professional Reporter, Registered Professional Reporter and Notary Public, do hereby certify:

That the witness in the foregoing deposition named was present at the time and place therein specified;

That the said proceeding was taken before me as a Notary Public at the same time and place and was taken down in shorthand writing by me;

That this transcript is a true and accurate transcript of my shorthand notes so taken, to the best of my ability.

I further certify that I am neither counsel for nor related to or employed by any of the parties to this action and that I am not a relative or employee of any counsel employed by the parties hereto or financially interested in the action.

_____

Paula Ann Erickson
Certified Shorthand Reporter
Registered Professional Reporter
License No. 084-003899
Notary Public

Dated this _____ day

of _____, 2019.

'

'06 [1] - 6:15
'80s [2] - 9:22, 24:14
'84 [1] - 5:24
'89 [1] - 5:4
'90s [1] - 24:14
'91 [2] - 4:22, 4:23

0

084-003899 [1] - 53:11

1

1 [1] - 46:10
1016 [1] - 4:15
12 [1] - 51:6
15 [1] - 28:17
178 [1] - 51:6
1984 [1] - 5:21

2

2 [3] - 46:10, 47:3, 47:17
20 [3] - 28:17, 29:11, 51:14
2011 [19] - 7:19, 10:3, 10:7, 11:12, 11:20, 12:4, 12:6, 12:24, 13:21, 13:24, 17:1, 21:20, 24:12, 24:21, 25:10, 26:9, 26:14, 49:4
2013 [1] - 51:14
2019 [2] - 51:20, 53:16
22ND [1] - 51:2
28 [2] - 26:13, 49:4

3

3 [4] - 46:10, 47:7, 47:13, 47:17
3500 [1] - 8:2

6

60051 [1] - 4:16

A

ability [1] - 52:18
able [2] - 6:21, 18:6
ACCARDO [2] - 48:1, 50:2
accident [50] - 7:14, 7:19, 10:3, 10:10, 10:22, 11:9, 11:20, 12:3, 12:20, 13:21, 13:24, 14:14, 15:3, 16:24, 17:5, 17:10, 17:19, 17:23, 18:2, 18:5, 18:8, 18:19, 18:21, 19:22, 20:13, 20:14, 20:17, 23:8, 26:13, 27:3, 27:5, 27:8, 27:17, 29:16, 34:23, 37:12, 39:21, 39:22, 40:1, 40:5, 42:13, 42:15, 42:20, 43:3, 43:13, 43:16, 44:10, 45:14, 46:2, 46:22
accordance [1] - 4:12
according [1] - 11:11
accurate [3] - 47:4, 47:21, 52:16
acquaintance [1] - 14:5
action [2] - 53:3, 53:5
adding [3] - 12:1, 12:11, 12:14
additional [1] - 47:7
address [3] - 4:14, 5:1, 5:5
affix [1] - 51:15
aforesaid [1] - 51:13
afterwards [1] - 44:12
Agent [1] - 51:8
ago [1] - 13:10
agree [1] - 20:14
ahead [4] - 10:12, 25:16, 33:19, 44:21
allegation [1] - 19:10
alone [1] - 39:12
Ann [2] - 52:4, 53:8
answer [6] - 12:1, 12:12, 12:13, 33:23, 43:13, 46:17
apple [10] - 10:17, 10:18, 11:3, 11:12, 11:21, 12:5, 25:1, 25:8, 26:11
applicable [1] - 4:12
area [1] - 32:24
arm [9] - 13:20, 35:5, 40:10, 40:14, 40:20, 40:24, 41:4, 41:5, 44:9
arrangement [2] - 22:14, 23:2
arrived [4] - 30:16, 31:7, 37:9, 37:22
aside [2] - 17:8, 21:11
assume [1] - 47:10
assuming [2] - 8:12, 31:17
attorney [8] - 17:12, 17:15, 19:9, 19:16, 20:5, 20:21, 20:24
attorney 's [1] - 21:11
attorneys [1] - 21:12
Avenue [1] - 4:15
aware [1] - 44:10

B

backing [1] - 22:23
backyard [4] - 10:17, 21:20, 27:14, 27:22
bad [1] - 14:22
bag [1] - 32:8
BARCH [7] - 17:12, 40:16, 41:2, 44:20, 48:3, 50:1, 50:4
base [3] - 28:6, 28:10, 29:2
beelining [1] - 35:8
began [1] - 32:14
behind [2] - 31:20, 31:21
best [1] - 52:17
between [1] - 23:3
big [1] - 28:6
bigger [1] - 28:20
BILL [2] - 51:8, 51:9
bit [3] - 12:5, 19:16, 27:11
bodied [1] - 7:23
borrow [2] - 9:9
borrowed [1] - 24:18
bottom [2] - 28:20, 29:1
bought [3] - 9:8, 9:11, 9:17
branches [7] - 22:4, 24:22, 26:10, 28:10, 28:24, 29:8, 29:23
break [1] - 32:12
buddy [1] - 14:10
bulk [1] - 26:4
BY [8] - 4:7, 4:13, 17:13, 40:21, 41:6, 45:1, 46:12, 48:3

C

car [2] - 35:11, 36:4
CAROLINE [2] - 51:8, 51:9
Carolyn [14] - 4:17, 5:13, 5:24, 6:6, 6:7, 6:8, 7:11, 7:18, 11:3, 23:3, 28:4, 39:10, 50:5
carpenter [2] - 6:13, 8:17
carrying [1] - 13:17
case [8] - 8:21, 9:3, 17:24, 19:2, 19:12, 20:8, 21:15
caught [1] - 35:12
caused [1] - 41:12
certain [1] - 28:14
Certified [2] - 52:4, 53:9
certify [2] - 52:6, 53:1
chain [54] - 7:5, 7:8, 7:10, 7:20, 7:23, 7:24, 8:11, 10:2, 10:6, 10:9, 10:14, 10:17, 10:20, 11:19, 12:3, 12:19, 13:2, 13:5, 13:21, 23:8, 23:12, 23:16, 23:18, 23:20, 24:1, 24:2, 24:12, 24:15, 24:16, 24:24, 25:5, 25:9, 25:17, 26:9, 37:13, 41:1, 41:5, 41:12, 43:4, 46:14, 46:19, 46:21, 46:24, 47:4, 47:15, 47:16, 47:18, 48:6, 48:12, 48:15, 48:23, 49:6, 49:10, 49:21
chance [2] - 35:24, 50:6
change [2] - 14:16, 21:5
changed [1] - 14:19
characterize [1] - 16:20
children [2] - 5:11, 5:13
chitchatting [1] - 32:13
chronic [1] - 7:3
CIRCUIT [2] - 51:1, 51:2
claim [1] - 17:19
clear [1] - 16:10
closer [1] - 10:19
collecting [1] - 39:3
coming [4] - 28:24, 30:1, 31:13, 48:18
comments [2] - 19:15, 21:11
commotion [1] - 34:24
company [2] - 25:20, 28:6
concern [1] - 49:7
concerned [1] - 49:5
consider [1] - 14:1
considered [1] - 14:4
conversation [2] - 40:6, 41:14
conversations [2] - 41:11, 41:18
copies [1] - 47:21
copy [1] - 47:4
correct [40] - 5:6, 5:14, 6:1, 6:20, 6:22, 6:24, 7:6, 7:13, 7:24, 8:22, 9:5, 9:7, 9:18, 13:16, 14:8, 18:20, 19:18, 20:18, 22:8, 23:17, 24:8, 25:10, 27:22, 27:23, 29:24, 33:9, 34:21, 36:6, 42:7, 42:10, 42:11, 42:24, 43:2, 43:16, 46:3, 46:15, 47:1, 47:9, 47:19, 47:22
counsel [2] - 53:1, 53:4
COUNTY [1] - 51:3
couple [4] - 13:7, 29:20, 43:23, 45:16
course [6] - 23:11, 24:7, 30:17, 31:6, 46:20, 48:16
COURT [1] - 51:1
covered [1] - 19:6
credible [1] - 17:1
cut [25] - 10:16, 11:12, 11:14, 11:21, 12:4, 12:7, 13:21, 15:2, 15:20, 21:21, 25:1, 25:18, 25:24, 26:6, 28:1, 28:6, 29:8, 32:24, 40:20, 40:24, 41:5, 41:8, 41:12, 41:16, 42:4
cutting [3] - 11:4, 26:10, 49:16

D

dangerous [1] - 12:19
dated [1] - 46:11
Dated [1] - 53:14
dating [1] - 6:3
daughters [1] - 5:14
Dave [60] - 5:18, 5:21, 5:22, 11:13, 12:24, 14:17, 14:18, 17:8, 17:9, 17:14, 18:10, 18:12, 18:18, 18:21, 18:24, 19:4, 19:11, 19:20, 19:22, 20:6,

20:10, 20:21, 20:24, 21:2, 21:14, 22:2, 22:10, 23:3, 24:23, 25:24, 26:8, 27:14, 27:24, 29:9, 31:17, 32:10, 34:16, 36:13, 36:14, 36:18, 36:23, 37:8, 37:22, 38:24, 39:1, 39:10, 39:11, 39:16, 39:20, 39:21, 39:24, 40:6, 40:15, 41:10, 41:15, 41:19, 41:23, 42:3, 46:21
Dave 's [4] - 17:14, 23:7, 28:9, 48:5
David [25] - 5:16, 9:22, 10:8, 10:16, 12:7, 17:12, 18:14, 20:13, 21:5, 21:8, 23:21, 23:23, 31:24, 36:23, 37:10, 37:11, 38:8, 40:18, 41:2, 41:4, 41:7, 48:22, 49:5, 49:17, 49:19
DAVID [1] - 51:7
David 's [1] - 19:15
decisions [1] - 49:16
Defendants [1] - 51:11
DEPONENT [1] - 50:9
deponent [1] - 51:13
deposeth [1] - 4:4
Deposition [1] - 46:9
deposition [6] - 4:10, 45:22, 46:20, 51:14, 51:15, 52:8
describe [3] - 45:2, 45:7, 45:13
described [3] - 39:24, 41:15, 45:21
describing [1] - 19:24
desk [1] - 7:21
diameter [1] - 29:6
different [2] - 19:23, 20:19
difficult [1] - 22:21
difficulties [1] - 44:9
directly [1] - 38:8
disability [2] - 6:16, 6:19
discovery [1] - 4:10
discuss [1] - 37:12
documents [3] - 47:13, 47:14, 47:22
dog [17] - 30:15, 30:23, 30:24, 31:9, 31:18, 31:19, 31:24, 32:1, 32:6, 32:20, 33:13, 34:7, 35:16, 35:19, 39:4, 39:6, 43:23
done [1] - 24:2
door [2] - 33:7, 35:13
down [19] - 8:16, 9:4, 10:16, 11:12, 11:16, 12:5, 12:7, 12:8, 21:21, 22:4, 24:22, 25:1, 25:21, 28:1, 28:5, 28:7, 29:8, 33:1, 52:14
driveway [1] - 33:4
drove [2] - 38:8, 39:11
dry [2] - 15:2, 15:20
Duh [1] - 15:9
Dulberg [2] - 9:21, 49:3
DULBERG [1] - 51:4
duly [2] - 4:4, 51:12
during [4] - 5:3, 30:20, 31:5, 32:15

E

early [1] - 7:19
easy [1] - 15:11
Efco [1] - 8:2
EFCO [1] - 8:2
effect [1] - 17:18
either [5] - 17:16, 20:21, 22:7, 37:12, 43:24
Elder [2] - 4:15, 5:5
emergency [2] - 8:22, 38:3
employed [2] - 53:2, 53:4
employee [1] - 53:3
engaged [2] - 32:11, 34:4
Erickson [2] - 52:4, 53:8
estimate [1] - 28:23
evening [1] - 37:6
evergreen [2] - 11:8, 24:21
evergreens [6] - 11:7, 21:20, 25:9, 26:10, 28:2, 28:24
exact [1] - 31:7
EXAMINATION [2] - 4:6, 48:2
exchange [1] - 44:18
exchanged [2] - 44:4, 45:18
Exhibit [4] - 47:3, 47:7, 47:13, 47:17
Exhibits [1] - 46:9
exhibits [1] - 46:13
experience [3] - 23:7, 48:5, 48:23
explain [1] - 40:22
extent [3] - 23:15, 34:9, 48:22

F

fabricate [5] - 20:7, 20:22, 21:3, 21:6, 21:14
fact [3] - 15:14, 16:1, 16:3
fair [13] - 10:21, 14:24, 16:18, 19:8, 21:10, 21:15, 23:4, 27:16, 34:14, 34:18, 34:20, 49:1, 49:15
far [4] - 21:5, 22:14, 23:3, 34:16
favor [2] - 19:13, 20:7
feelings [1] - 14:19
feet [2] - 28:18, 29:3
fib [1] - 17:5
fibber [7] - 14:23, 15:1, 15:16, 15:24, 16:5, 16:11, 16:21
fibbing [1] - 16:14
figure [1] - 37:4
filed [6] - 15:8, 15:15, 15:19, 16:1, 16:3, 16:8
filing [1] - 16:21
fill [1] - 39:11
final [1] - 50:7
financially [1] - 53:5
fine [7] - 44:3, 44:13, 44:22, 44:23, 45:3, 45:5, 45:7
finish [5] - 19:1, 22:24, 25:23, 30:9, 44:16
firewood [1] - 26:1
first [8] - 4:4, 10:1, 34:22, 40:3, 41:14, 43:15, 46:14, 51:12
five [1] - 29:3
follow [1] - 44:8
follow -up [1] - 44:8
follows [1] - 4:5
FOR [1] - 51:2
foregoing [2] - 51:15, 52:8
form [1] - 44:20
forward [1] - 22:24
four [2] - 29:3, 36:17
framed [1] - 20:4
free [1] - 45:8
friend [5] - 14:1, 14:2, 14:4, 24:19, 48:21
friends [2] - 9:23, 48:18
front [2] - 25:13, 46:15
FURTHER [1] - 50:9

G

Gagnon [2] - 5:16, 12:7
GAGNON [1] - 51:7
garage [3] - 31:20, 31:21, 31:23
gas [2] - 7:24, 22:10
generally [1] - 41:15
gift [1] - 22:16
glimpse [1] - 35:13
great [2] - 44:14, 44:17
grocery [3] - 13:10, 42:21, 45:22
ground [3] - 10:19, 11:22, 29:23
guess [1] - 17:15
guy [2] - 38:18, 44:22
guys [1] - 21:21

H

half [2] - 29:6, 29:20
hand [1] - 4:2
handful [1] - 24:6
hang [2] - 40:13
hard [1] - 15:14
healing [1] - 44:23
hear [1] - 35:15
heard [20] - 17:7, 17:9, 17:15, 17:21, 17:22, 18:2, 18:4, 18:10, 19:9, 19:14, 19:16, 20:5, 20:20, 21:13, 21:17, 23:10, 34:24, 44:11, 48:11, 48:14
heavy [1] - 6:21
help [4] - 11:13, 20:8, 22:2, 30:1
helping [2] - 48:18, 48:21
hereby [1] - 52:6
hereto [1] - 53:4
hi [8] - 13:12, 13:13, 32:1, 32:6, 32:21, 43:1, 43:5, 43:6
hi's [1] - 45:18
high [2] - 28:13, 28:16
hold [1] - 19:1
home [12] - 26:19, 37:4, 37:9, 37:20, 37:21, 37:22, 38:8, 39:2, 39:17, 48:7, 48:19, 48:24
honest [2] - 15:1, 17:1
hospital [5] - 35:3, 36:4, 36:14, 36:15, 37:9
hour [1] - 29:20
hours [3] - 29:18, 29:20, 36:16
house [37] - 7:15, 10:3, 10:7, 10:16, 10:22, 11:20, 12:4, 12:6, 12:24, 13:21, 14:1, 14:20, 16:24, 23:9, 23:21, 24:16, 25:10, 26:23, 27:9, 27:10, 27:12, 27:13, 31:22, 32:1, 33:8, 34:2, 34:10, 35:11, 37:15, 38:1, 38:7, 38:9, 38:14, 43:3, 43:16, 45:16
hurt [3] - 26:11, 30:11, 38:18

I

idea [2] - 29:7, 33:11
Illinois [1] - 4:16
ILLINOIS [1] - 51:3
IN [1] - 51:1
inch [1] - 29:6
incident [1] - 41:19
including [4] - 19:18, 20:6, 21:2
indifferent [1] - 14:22
Individually [1] - 51:7
individually [1] - 51:10
injured [4] - 36:7, 36:10, 36:11, 49:4
injury [12] - 6:18, 8:12, 10:7, 12:24, 14:20, 26:22, 27:17, 27:21, 33:21, 34:10, 36:5
inquiry [1] - 45:6
inside [3] - 31:18, 33:15, 34:7
instead [1] - 12:13
interested [1] - 53:5
interrupted [1] - 11:24
invited [1] - 30:4
issues [1] - 18:7

J

JUDICIAL [1] - 51:2
June [10] - 7:19, 10:3, 11:20, 12:4, 12:24,

13:24, 17:1, 21:20, 26:13, 49:4
justified [1] - 19:12

K

keep [4] - 12:11, 22:19, 22:23, 33:22
kids [2] - 9:8, 9:23
kind [5] - 6:2, 6:5, 22:16, 34:2, 44:6
knock [1] - 22:4
knowledge [2] - 34:11, 34:22
known [5] - 5:18, 5:21, 5:24, 9:20, 24:11

L

LA [1] - 51:6
last [2] - 13:8, 22:17
lawsuit [10] - 15:7, 15:15, 15:19, 16:1, 16:4, 16:8, 16:13, 16:15, 16:21
leading [1] - 27:7
learn [1] - 8:16
least [4] - 14:16, 38:12, 39:10, 44:7
leave [1] - 37:19
leaving [1] - 36:3
left [6] - 25:23, 36:13, 37:23, 45:17, 49:15
level [1] - 28:14
liar [3] - 16:5, 16:6, 16:11
License [1] - 53:11
lie [5] - 18:22, 20:7, 20:22, 21:3, 21:14
life [2] - 7:6, 18:6
limbs [5] - 28:1, 28:5, 28:20, 28:21, 28:24
listen [2] - 15:10, 22:17
live [1] - 4:17
lived [3] - 4:24, 23:21, 23:23
living [4] - 23:11, 24:9, 48:17
look [3] - 47:11, 47:12, 50:5
looked [1] - 31:8
lower [5] - 11:16, 11:22, 12:5, 12:8, 22:4
lying [1] - 16:14

M

manner [1] - 49:5
manual [1] - 47:4
maple [1] - 25:13
March [1] - 51:14
marina [1] - 6:8
mark [1] - 46:7
marked [3] - 46:7, 46:10, 46:13
marriage [1] - 5:3
marriages [1] - 5:9
married [3] - 4:21, 5:7, 5:19
Mast [1] - 48:4
MAST [11] - 4:7, 4:10, 4:13, 17:13, 40:21, 41:3, 41:6, 45:1, 46:12, 47:24, 50:3
materials [2] - 47:17, 47:18
McArtor [1] - 39:6
McGuire [10] - 4:3, 4:9, 4:11, 4:14, 51:8, 51:9, 51:9, 51:12, 51:17
McHenry [2] - 4:15, 51:3
mean [3] - 9:2, 15:2, 30:16
meaning [2] - 16:5, 37:1
meant [4] - 5:3, 16:13, 44:23, 45:2
meet [4] - 5:22, 6:5, 6:6, 6:7
Menards [2] - 8:10, 47:1
mentioned [2] - 21:8, 48:6
met [4] - 6:8, 9:22, 34:2, 45:22
method [1] - 49:5
mid [1] - 24:14
midst [1] - 32:15
might [8] - 7:17, 24:18, 24:19, 27:11, 32:8, 33:19, 35:12, 46:7
Mike [1] - 37:5
mike [1] - 39:6
mind [3] - 14:16, 14:18, 16:10
mine [1] - 24:18
minute [4] - 17:8, 32:2, 38:13, 39:3
minutes [2] - 43:23, 45:16
money [2] - 19:2, 22:15
mood [1] - 36:24
most [1] - 27:7
mother [2] - 5:23, 13:23
mothering [1] - 22:12
move [1] - 22:23
moved [1] - 5:4
MR [20] - 4:7, 4:10, 4:13, 17:12, 17:13, 40:16, 40:21, 41:2, 41:3, 41:6, 44:20, 45:1, 46:12, 47:24, 48:1, 48:3, 50:1, 50:2, 50:3, 50:4
MT [1] - 8:2
must [1] - 36:5

N

name [1] - 4:8
named [1] - 52:9
names [2] - 40:11, 40:16
need [4] - 14:17, 40:11, 46:17, 47:11
needed [1] - 29:8
never [12] - 7:8, 8:11, 18:5, 19:4, 19:9, 21:8, 21:13, 21:17, 27:20, 31:15, 41:23, 46:1
new [1] - 47:1
next [1] - 36:14
nobody [4] - 19:16, 20:9, 20:10, 20:24
normal [1] - 45:10
NOT [1] - 50:9
Notary [4] - 51:22, 52:5, 52:13, 53:12
notes [1] - 52:17
nothing [2] - 15:21, 17:21
notice [2] - 4:11, 34:22

O

oath [1] - 51:13
object [1] - 44:20
obviously [4] - 14:13, 16:14, 44:7, 44:8
occurred [10] - 14:14, 16:24, 27:3, 27:6, 37:13, 39:22, 40:1, 41:19, 42:13, 45:14
often [1] - 24:4
once [4] - 28:4, 37:22, 42:20, 43:4
one [16] - 8:13, 9:8, 11:20, 12:7, 19:5, 22:1, 24:5, 24:19, 26:11, 42:22, 43:15, 45:17, 45:21, 46:7, 46:14
operate [1] - 10:14
options [2] - 9:10, 9:14
outside [11] - 14:6, 27:13, 31:10, 31:12, 31:24, 32:2, 33:17, 33:20, 34:1, 34:10, 34:24

P

pain [1] - 45:8
pair [1] - 22:11
pants [1] - 22:11
paperwork [1] - 47:8
part [3] - 15:15, 49:23, 49:24
parties [2] - 53:2, 53:4
patched [1] - 35:2
PAUL [1] - 51:4
Paul [91] - 9:20, 10:6, 10:13, 10:17, 11:13, 11:19, 12:3, 12:18, 12:22, 13:1, 13:9, 14:19, 16:11, 17:1, 17:9, 17:16, 17:18, 17:22, 18:2, 18:4, 18:13, 18:18, 18:22, 19:10, 19:11, 19:18, 19:23, 20:6, 20:10, 20:14, 20:21, 20:22, 21:3, 21:5, 21:14, 23:9, 25:12, 25:24, 26:1, 26:4, 26:11, 27:13, 30:1, 30:10, 31:17, 31:24, 32:1, 32:10, 32:19, 34:16, 35:17, 36:8, 36:10, 36:13, 36:14, 36:18, 36:22, 37:1, 37:3, 37:8, 37:9, 37:22, 38:2, 38:5, 38:18, 38:19, 38:20, 39:7, 39:11, 39:17, 40:13, 40:15, 40:19, 41:4, 41:11, 41:15, 42:3, 42:12, 42:16, 43:12, 43:16, 43:20, 43:22, 43:24, 44:7, 45:14, 46:1, 49:19
Paul 's [18] - 7:14, 7:19, 10:2, 11:9, 12:23, 13:24, 26:13, 26:21, 27:3, 27:16, 27:21, 33:21, 34:10, 34:23, 35:5, 35:19, 43:3, 46:22
Paula [2] - 52:4, 53:8
pay [1] - 22:10
peace [1] - 14:17
people [5] - 17:23, 19:13, 20:7, 20:22, 40:17
people 's [1] - 48:20
period [1] - 37:16
permanent [1] - 7:2
person [1] - 17:2
personally [2] - 9:3
pertain [1] - 20:13
pet [4] - 31:19, 32:6, 32:20, 34:7
petted [4] - 30:14, 30:22, 31:18, 31:24
photograph [1] - 46:14
photographs [1] - 46:6
physically [2] - 9:2, 23:11
pick [1] - 8:19
picked [1] - 39:6
pieces [1] - 25:18
pine [2] - 11:6, 11:8
place [2] - 52:9, 52:13
Plaintiff [1] - 51:5
planning [1] - 8:13
pleasantries [2] - 44:4, 44:19
point [1] - 24:17
porch [1] - 33:7
possible [1] - 22:19
prescription [1] - 39:11
present [2] - 43:18, 52:9
pretty [1] - 27:6
problem [1] - 7:3
problems [3] - 9:4, 13:20, 44:18
proceeding [1] - 52:12
process [1] - 30:20
Professional [3] - 52:4, 52:5, 53:10
project [1] - 23:10
property [13] - 10:8, 23:12, 23:20, 23:23, 24:3, 24:24, 26:9, 30:7, 30:10, 30:13, 31:4, 32:19, 48:20
prune [2] - 23:12, 24:15
pruning [4] - 24:2, 48:6, 48:20, 49:13

Public [4] - 51:22, 52:6, 52:13, 53:12
purchase [4] - 8:9, 8:14, 47:14, 47:18
purchased [5] - 7:12, 7:20, 8:7, 46:24, 47:5
pursuant [1] - 4:11
put [2] - 17:8, 21:21
putting [1] - 21:10

Q

questions [3] - 13:7, 15:10, 48:1
quick [3] - 8:19, 22:19, 22:22
quite [1] - 20:1

R

raise [1] - 4:1
ran [2] - 9:24, 34:24
read [2] - 50:6, 51:14
reading [2] - 8:3, 15:6
real [1] - 22:22
really [5] - 28:9, 29:21, 37:11, 39:1, 40:23
rear [1] - 34:2
reason [4] - 9:11, 17:4, 32:7, 49:4
receipt [1] - 47:8
recover [1] - 20:8
red [1] - 7:23
referencing [2] - 48:15, 48:16
referring [1] - 40:17
regard [3] - 19:21, 21:12, 45:11
Registered [2] - 52:5, 53:10
related [2] - 44:17, 53:2
relationship [2] - 29:16, 33:10
relative [1] - 53:3
remember [25] - 22:1, 22:6, 25:7, 25:11, 25:12, 25:17, 25:19, 27:4, 27:11, 29:21, 31:13, 32:9, 32:18, 35:6, 35:14, 37:20, 37:24, 38:7, 38:8, 38:9, 38:10, 38:13, 39:7, 39:9, 43:8
remembering [1] - 4:22
repeatedly [1] - 24:5
repeating [1] - 22:20
Reporter [4] - 52:5, 53:9, 53:10
REPORTER [1] - 4:1
reserve [1] - 50:5
respect [2] - 49:19, 49:22
response [1] - 45:5
retire [3] - 6:14, 18:23, 19:2
retired [3] - 6:9, 6:11, 26:18
return [2] - 19:13, 23:4
returned [1] - 39:17
reword [1] - 12:13
rich [1] - 18:6
room [1] - 38:3
rules [1] - 4:12

S

SAITH [1] - 50:9
saith [1] - 4:4
saw [65] - 7:6, 7:8, 7:10, 7:20, 7:23, 7:24, 8:11, 10:3, 10:7, 10:9, 10:13, 10:14, 10:17, 10:18, 10:20, 11:19, 12:3, 12:19, 13:2, 13:5, 13:8, 13:21, 23:8, 23:13, 23:16, 23:18, 23:20, 24:1, 24:2, 24:12, 24:15, 24:16, 24:24, 25:5, 25:9, 25:17, 26:9, 30:20, 31:10, 31:15, 31:23, 32:10, 32:23, 36:4, 37:13, 41:1, 41:5, 41:12, 43:4, 45:17, 46:15, 46:19, 46:21, 46:24, 47:4, 47:15, 47:16, 47:19, 48:6, 48:7, 48:23, 49:6, 49:10, 49:21
saws [2] - 48:12, 48:15
scrap [1] - 25:12
sections [2] - 25:24
see [9] - 5:2, 12:18, 13:11, 13:17, 13:19, 13:22, 30:22, 36:14, 39:6
seeing [2] - 23:12, 31:3
several [1] - 24:7
shed [1] - 21:21
Short [1] - 37:16
short [1] - 37:16
shorthand [2] - 52:14, 52:17
Shorthand [1] - 53:9
signature [1] - 51:16
sitting [1] - 33:13
socialize [1] - 14:6
sometime [5] - 7:19, 10:3, 11:4, 11:11, 30:17
somewhere [1] - 33:3
son [6] - 5:14, 5:16, 14:7, 14:8, 14:13, 22:12
sore [2] - 36:22, 37:10
sorry [4] - 6:7, 15:13, 16:7, 17:11
soul [1] - 17:2
sounds [1] - 26:15
specific [1] - 41:23
specifically [1] - 32:5
specifics [1] - 45:14
specified [1] - 52:10
specify [3] - 41:7, 41:10, 42:4
spoken [4] - 14:17, 43:4, 43:12, 46:1
standing [1] - 33:13
started [2] - 6:2, 29:15
state [1] - 4:8
status [1] - 14:3
stay [1] - 39:2
stepson [1] - 14:4
stepson 's [1] - 14:2
still [1] - 39:20
stop [1] - 40:15
storage [1] - 21:21
store [3] - 13:10, 42:21, 45:23
storm [1] - 8:15
story [1] - 21:6
Strike [1] - 18:3
stuck [2] - 40:9, 40:13
stuff [4] - 23:10, 24:15, 48:11, 48:14
stump [9] - 10:18, 11:14, 11:15, 11:21, 11:22, 12:4, 12:8
stumps [1] - 25:23
Subscribed [1] - 51:19
suggest [4] - 13:20, 17:22, 18:5, 21:13
suggested [1] - 20:21
suggestion [1] - 19:10
supermarket [2] - 43:5, 45:18
supposedly [1] - 18:13
sworn [3] - 4:4, 51:12, 51:19

T

table [2] - 7:11, 46:15
talkative [1] - 36:24
tall [1] - 28:18
task [1] - 28:9
tasks [2] - 34:17
tending [1] - 49:13
terms [2] - 14:12, 14:13
THE [7] - 4:1, 40:18, 41:4, 44:22, 50:8, 51:1, 51:2
therein [1] - 52:9
thinks [1] - 14:18
three [4] - 5:13, 13:10, 36:17, 46:13
today [6] - 7:21, 13:7, 14:19, 42:23, 46:14, 46:20
took [5] - 25:12, 25:20, 26:4, 39:7, 46:14
top [2] - 28:21, 47:9
total [1] - 29:8
towards [1] - 33:5
towel [1] - 35:7
track [1] - 33:22
transcript [4] - 50:6, 51:15, 52:16, 52:17
trash [1] - 32:9
treatment [1] - 44:8
tree [19] - 10:17, 11:3, 11:6, 11:8, 11:12, 11:15, 11:21, 12:5, 25:1, 25:8, 25:13, 25:20, 25:21, 26:11, 28:5, 28:6, 28:10, 32:11, 32:24
trees [11] - 8:16, 9:3, 23:12, 24:22, 28:18, 29:1, 48:7, 48:20, 49:13, 49:22
true [12] - 11:23, 11:24, 12:9, 16:22, 16:23, 26:14, 27:19, 47:3, 49:2, 49:24, 52:16
truth [2] - 18:15, 18:19
try [4] - 10:18, 12:13, 22:23, 40:16
trying [20] - 15:18, 17:9, 17:19, 17:23, 18:22, 19:11, 19:13, 20:7, 21:14, 22:21, 25:11, 27:10, 31:14, 35:6, 35:14, 37:4, 37:20, 38:9, 42:19, 44:18
TV [2] - 27:1, 27:5
twice [3] - 22:17, 43:13, 43:14
two [10] - 5:14, 7:20, 20:16, 21:19, 24:21, 25:8, 26:9, 28:1, 32:3, 46:2
type [4] - 6:3, 6:21, 7:2, 27:18

U

ultimately [1] - 28:4
unsafe [1] - 12:19
up [16] - 8:19, 16:10, 22:23, 24:15, 25:18, 25:24, 26:6, 27:7, 28:12, 28:14, 31:22, 34:2, 35:2, 39:6, 44:8, 49:17

V

vehicle [4] - 35:1, 35:9, 35:15, 35:21
verbalize [1] - 46:17
versions [1] - 20:16
versus [1] - 14:19
viewed [1] - 27:20
vs [1] - 51:6

W

wait [3] - 38:13, 40:15, 46:5
walked [1] - 27:11
walking [1] - 13:22
warranted [1] - 17:10
watch [1] - 35:15
watching [2] - 27:1, 27:5
week [4] - 26:16, 43:10, 43:15, 44:12
weeks [1] - 13:10
West [1] - 4:15
wide [4] - 28:23, 29:5, 29:6
wife [13] - 4:19, 22:1, 22:7, 22:9, 25:14, 25:20, 33:15, 33:17, 33:20, 35:6, 36:10, 43:19, 44:3
WILLIAM [3] - 4:3, 51:12, 51:17
William [2] - 4:9, 4:11
window [1] - 35:21

WITNESS [4] - 40:18, 41:4, 44:22, 50:8
witness [1] - 52:8
wondering [1] - 8:15
wood [2] - 26:4, 26:5
word [3] - 19:17, 45:3, 45:5
words [1] - 15:23
worth [1] - 17:24
wrapped [1] - 35:5
writing [1] - 52:14

Y

yard [5] - 24:15, 25:13, 30:14, 31:8, 33:6
year [6] - 7:14, 10:21, 10:24, 11:4, 24:24, 47:1
years [2] - 24:7, 48:17
yelled [1] - 35:21
yourself [1] - 9:17

MEMORANDUM

TO: File

FROM: Hans

DATE: March 25, 2013

SUBJECT: **DISCOVERY DEPOSITION OF WILLIAM MCGUIRE**

CASE: PAUL DULBERG

On March 20, 2013, I took the discovery deposition of Bill McGuire before court reporter, Paula Erickson at Urbanski Reporting 312/977-1777. The transcript was ordered by defense counsel, we ordered a copy.

Bill McGuire is a very pleasant individual and will probably come across as a credible witness although he doesn't know a whole lot. He testified similar to his wife, Caroline to the following favorable and unfavorable points.

FAVORABLE TESTIMONY:

1. Prior to the accident he felt Paul was a credible and honest person and he had known him a long time because Paul was friends with his stepson, Dave.

2. Since the accident he has never known Paul to ask anyone to tell a lie or to fabercate any testimony.

UNFAVORABLE TESTIMONY:

1. He is not happy with Paul because he thinks Paul has filed suit against him for no reason and apparently according to his stepson, Dave Paul is not telling the truth about what happened although he doesn't know personally because he was not a witness.

Bill McGuire lives with his wife Caroline at 1016 W. Elder Avenue in McHenry. They have been married since 1991. He has no children, but Caroline has 3 including Dave Gagnon. He has known Dave Gagnon since 1984 when he first met his mother, Caroline at a marina. Bill has been retired since 2006 when he was a carpenter and hurt his back and could not return to work.

Bill has no experience using chainsaws. He has never used one in his life. Early 2011 he purchased a new chainsaw from Menards because he was thinking he might have to use one because of the storm maybe blowing trees or limbs down in his backyard. He also was going to have it available for anybody including his son, Dave who might need to use it.

The only time that he is aware of that the chainsaw was ever used was maybe in May 2011 when Dave had to cut an apple tree down in their yard. He believes Paul even used the chainsaw to cut the stump down a little bit further. After Paul's accident in June 2011, he only spoke to Paul once and that was at a supermarket when he saw him months after the accident and they said hi to each other. He doesn't know Paul's version of the accident. At first he called Paul a fibber because he filed suit against him but he realizes that maybe Paul isn't fibbing because he doesn't really know who is telling the truth or how the accident occurred. Paul never told him how the accident occurred in his words.

To his knowledge, Dave has used the chainsaw on a couple occasions on his property, one to cut the apple tree down a month before the accident and another time a day before Paul's accident to cut the branches from the evergreens. He explained that on June 28, 2011, he was in the house watching tv and he realized that Paul had arrived at some point because Paul was in the backyard helping Dave with the evergreens. He doesn't know when Paul first got there or how long he was there but apparently Dave started cutting the branches down the day before. Paul was there on this day to help Dave with the branches. He never saw them doing the work and therefore, he doesn't know who was doing what or when or how.

All of the sudden he heard a commotion in the backyard and saw that Paul and Dave were running to get in the car to get to the hospital. He realized that Paul was hurt. He was very unclear about when they arrived back from the hospital or if Paul arrived with Dave or whether Dave arrived back from the hospital alone.

But it wasn't until the next day that he spoke to Dave that Dave told him that Paul somehow caused the accident. He didn't specify what Paul did to cause the injury but just blamed it all on Paul and said Paul did something wrong. He never clarified what he meant by that.

One other time he spoke to Paul after the accident was maybe a week after the accident when Paul came over for about 2 mins and basically said that everything was fine. He didn't suggest that he was hurting anymore.

COPY

Discovery Deposition
of **CAROLYN McGUIRE**

Date: March 20, 2013

Case: Dulberg v. Gagnon

Urbanski
Reporting Company

Phone: 312-977-1777

IN THE CIRCUIT COURT

FOR THE 22ND JUDICIAL CIRCUIT

McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 12 LA 178
	)	
DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, individually,	)	
	)	
Defendants.	)	

The deposition of CAROLYN McGUIRE, taken in the above-entitled cause, before Paula Ann Erickson, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public, on March 20, 2013, at 3421 West Elm Street, McHenry, Illinois, at the approximate hour of 1:00 p.m.

REPORTED BY: PAULA A. ERICKSON

C.S.R. LICENSE NO. 084-003899

APPEARANCES:

MR. HANS MAST
LAW OFFICES OF THOMAS J. POPOVICH
3416 W. Elm Street
McHenry, Illinois 60050
(815) 344-3797

Appeared on behalf of the Plaintiff.

MR. RONALD A. BARCH
CICERO, FRANCE, BARCH & ALEXANDER, PC
6323 East Riverside Boulevard
Rockford, Illinois 61114
(815) 226-7700

Appeared on behalf of the Defendants, Carolyn and Bill McGuire.

MR. PERRY A. ACCARDO
LAW OFFICE OF M. GERARD GREGOIRE
200 North LaSalle Street
Suite 2650
Chicago, Illinois 60601
(312) 558-9821

Appeared on behalf of the Defendant, David Gagnon.

* * * *

I N D E X

WITNESS PAGE

CAROLYN McGUIRE

BY MR. MAST..... 4

BY MR. BARCH.....103

E X H I B I T S

(NO EXHIBITS MARKED)

THE REPORTER: Ma'am, can you raise your right hand, please?

CAROLYN McGUIRE,

after being first duly sworn, deposeth and saith as follows:

EXAMINATION

BY MR. MAST:

Q. All right. Please state your name.

A. Carolyn McGuire.

Q. Okay. And you are Dave Gagnon's mother?

A. Yes.

Q. And you know why we are here today I assume?

A. Yes.

Q. About the chain saw accident?

A. Yes.

Q. Okay. And I represent Paul Dulberg.

A. Okay.

MR. MAST: This is the discovery deposition of Carol McGuire -- Carolyn McGuire.

THE WITNESS: It's Carolyn, right.

MR. MAST: It's what?

THE WITNESS: It is Carolyn. I know it was written -- It's C-A-R-O-L-Y-N.

MR. MAST: Okay. Very good. Taken pursuant to

notice, in the course of the applicable rules.

I am just going to ask you some questions about this incident. I am trying to find out what you know, so if you don't know things, that's fine, too, but I will just ask you some questions and, please let me finish my question before you answer so we don't talk over each other and if you don't understand the question, let me know and I will try to rephrase it for you, okay?

THE WITNESS: Okay.

BY MR. MAST:

Q. What's your date of birth?

A. November 26, 1946.

Q. Okay. That makes you, what, 65?

A. 66.

Q. 66. Okay. And what's your address?

A. 1016 West Elder, that's E-L-D-E-R, Avenue, McHenry, Illinois, 60051.

Q. And who do you live there with?

A. My husband, William McGuire.

Q. Okay. How long have you been married?

A. Let's see. We got married in 1993.

Q. 20 years?

A. That would be 20 years I guess, yeah.

Q. Okay. And I understand that William is David's stepfather, right?

A. Yes.

Q. And what's his father's name?

A. His real father's name was Alan, A-L-A-N, A., Gagnon, G-A-G-N-O-N.

Q. Were you married?

A. Yes. We were married.

Q. Did he pass?

A. Yes. He has passed on.

Q. When did he pass on?

A. He died when he was 50 so that was 16 years ago so 1990 --

Q. So was there a divorce?

A. Oh, we were divorced. Yeah.

Q. Okay. Do you have any other children?

A. I have two daughters. I have a Diane Lutz, L-U-T-Z. She is my oldest.

Q. Where does she live?

A. She lives at 4708 Wilmot Road, McHenry, Illinois.

Q. Okay.

A. And then I have another daughter. Her name is Donna Giovanni, G-I-O-V-A-N-N-I, and she lives on

Terrace in Johnsburg. I am trying to think of their address. I can't think of it right offhand.

Q. Okay. And Dave is married?

A. David is married.

Q. How long has he been married?

A. It was four years.

Q. What's his wife's name?

A. Pam.

Q. Okay. So they live up in where?

A. They live -- Well, their mailing address is Geneva, Wisconsin.

Q. Lake Geneva?

A. But they don't live in Lake Geneva. Oh -- No. It's Genoa. What am I saying. It's Genoa, Genoa, Wisconsin.

Q. Right near Lake Geneva?

A. Right. It's close.

Q. Okay. And before being married to Pam four years ago, did he live with you two?

A. No. They lived in that house where they live now but they weren't married.

Q. How long did they live at that house?

A. At least 12 years.

Q. Oh, that long?

A. Yeah. Maybe 12 years.

Q. So 12 years ago was David living with you?

A. Yeah. He lived with me then.

Q. For how long?

A. His whole life until he left. He was there a long time.

Q. How old is Dave?

A. Dave is 45 right now.

Q. Okay. So he lived with you over 30 years then?

A. Probably. Yeah. Yeah.

Q. Right?

A. 30. Yes. Yep.

Q. What does Dave do for a living?

A. He does auto body work.

Q. Does he do it for somebody or out of his house?

A. He is self-employed.

Q. Out of his house then?

A. Yeah. Right.

Q. Okay. You are aware of this chain saw accident involving my client Paul Dulberg at your house, right?

A. Correct.

Q. And I think it happened in June of 2011. Does that make sense?

A. Yes.

Q. Okay. Do you know the day?

A. I believe it was the 28th or the 29th of June. It was towards the end there.

Q. Okay. And the incident occurred I think -- and just generally now, we are going to go into the details, but I think Paul was helping Dave with some tree, cutting down some branches or something on your property, right?

A. Correct.

Q. Okay. And Dave has already been deposed and I don't have -- I am just trying to remember what he said.

A. Uh-huh.

Q. But so I am going to ask you a little bit about what your understanding was that he was doing but as I recall, he said that he was taking a tree down for you. Does that sound right?

A. Yeah. There was two trees in the back there. They were evergreens.

Q. So there were two trees that you wanted him to take down?

A. Yes. Because we were going to put a shed up back there.

Q. Okay. So at some point I am assuming neither you nor your husband are able to take a tree down with a chain saw, right?

A. No.

Q. Is that right?

A. That's correct. We did not.

Q. Well, you aren't even able to do it because you are just not -- you don't know how to do a chain saw?

A. I am afraid of a chain saw.

Q. Probably your husband is the same?

A. Yes. He never used one either, yeah.

Q. So you knew that Dave had some experience with chain saws?

A. Yes.

Q. Okay. If I were to go through what level of experience he had in using chain saws before Paul's accident, would you know?

A. He has used them many a times. If you go from a one to a ten, I'd have to say a ten because he has taken down trees at his house and so -- big trees.

Q. This is what I am asking, though --

A. Okay.

Q. Let me ask it this way: Before Paul's accident, do you know how long Dave has had experience using chain saws? A year, five years, ten years, twenty years, do you have any idea?

A. Well, I'd have to say probably as long as he was probably on his own property because he had cut down trees then and anything prior to that, I really don't remember.

Q. Okay. So you are saying for at least the last 12 years?

A. At least, yes.

Q. Okay. So as soon as Dave began living up in Genoa from that time until Paul's accident you knew he was using chain saws?

A. Right.

Q. Before he began living up in Genoa 12 years ago, what experience he had with chain saws you are not sure; is that correct?

A. No, because like you said, he lived with me for how many years and the only thing we ever cut down on our property was the apple tree in the back.

Q. And did he do that?

A. Yeah. He did that.

Q. With a chain saw?

A. With a chain saw, so that was before this accident happened the timeframe.

Q. So I want to get a summary of what you have just said just so I understand.

A. Okay.

Q. So you are saying for the past 12 years while Dave was living up in Genoa, you believed he has used a chain saw regularly because that would be needed on his property?

A. Uh-huh.

Q. Right?

A. Right.

Q. Okay. But 12 years ago, before 12 years ago when he lived with you, you knew he took down a tree but other than that, you are not aware of what experience he had with chain saws; is that right?

A. No. I don't know if he had any.

Q. Is that correct what I just said?

A. That's correct. That's correct.

Q. I am going to say it again because the no and the yeah messed it up.

A. Okay.

Q. Before 12 years ago --

A. All right.

Q. -- prior to that, other than Dave cutting down a tree on your property while he was living with you, you are not aware of any other experience he had using a chain saw during -- before 12 years ago; is that correct?

A. Correct.

Q. Okay. And how long did it take him to cut that tree down more than 12 years ago on your property?

A. Well, that wasn't even 12 years ago. That tree was -- Okay. I'm sorry. The tree was actually cut down before -- you know, not long before this accident happened.

MR. BARCH: You got to listen to his questions because he was asking you if the apple tree was cut down more than 12 years ago so you got to listen to his question.

MR. MAST: Let me say it again.

THE WITNESS: I was going to break in but then --

BY MR. MAST:

Q. I am happy to go through this to make sure you understand it but if you don't understand it, you got to let me know so we don't get it taken down

wrong, okay?

A. All right.

Q. So let's go back over that. All right. Over the last 12 years while Dave was living up in Genoa with his wife, you have known Dave to regularly use a chain saw not only at his property but for you, right? Is that correct?

A. Okay. Correct.

Q. Okay. Prior to 12 years ago when Dave was living with you for the rest of his life pretty much, have you ever known what experience he has in use of a chain saw?

A. No.

Q. Okay. Do you know if he ever used a chain saw more than 12 years ago?

A. I don't know.

Q. Okay. So the answer is the first time you are aware that Dave has used a chain saw was after he moved from your house and moved up to Genoa and lived with his wife?

A. Right.

Q. His soon to be wife, right?

A. Right.

Q. And that was for the last 12 years, correct?

A. Correct.

Q. Before that you are not sure what experience or use he had of a chain saw, fair enough?

A. Fair enough. Right.

Q. Okay. So I am assuming, and you can correct me if I am wrong, did you ever see Dave use a chain saw over at his house?

A. No. I would --

Q. You just knew he did?

A. Right. I seen a tree down.

Q. Did he have his own chain saw?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. You can't block your mouth because we have to make sure you say it loud for us, all right?

A. Yes.

Q. I am assuming, and you can correct me if I am wrong, the only time you saw Dave use a chain saw has been on your property?

A. Yes.

Q. And that would have been within the last 12 years?

A. Yes.

Q. Okay. All right. So my next question obviously is then before Paul's accident, how many times have you known Dave to use a chain saw on your property?

A. Twice.

Q. Okay. One was for the apple tree and the other was for this accident, right?

A. No, and the other one was the tree in the front we had taken down before this, too, within, you know, a span of maybe a couple months and we had somebody come and take down the whole tree but this was like big pieces. It was a huge tree.

Q. Got it.

A. And so David and Paul were helping. They were using Paul's chain saw.

Q. All right. I am going to get to that. It's a little bit more wordy than I was asking. My question was: How many times before Paul's accident had Dave cut or used the chain saw on your property and your answer is three?

A. Well, twice. The apple tree and the big tree in the front.

Q. And he was also working on your property before --

A. Right, and --

Q. We can't talk over each other, though. You got to let me come to an end, okay, and then you can answer. I will let you say whatever you want but you got to let me come to an end.

Would it be fair to say that Paul has used a chain saw on your property in the last 12 years three times, three separate times?

A. Did you just say Paul?

Q. I'm sorry I did, didn't I?

MR. ACCARDO: Yes.

MS. MAST: See, she is listening to me.

BY MR. MAST:

Q. Is it fair to say over the last 12 years Dave has used a chain saw on your property on three separate occasions?

A. Correct. Yes.

Q. Okay. The one occasion was in conjunction with the work he was doing before Paul's accident?

A. Yes.

Q. The other was the apple tree?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. And the other was that tree in the front that you had cut down and he had to cut it up?

A. Correct.

Q. Is that right?

A. Yes.

Q. All right. So now I want to try to get a timeframe for those three occasions. I know when the third occasion was because that's in June of 2011, right? Right?

A. Right.

Q. Okay. So give me the timeframe of the other two occasions if you can generally.

A. Well, let's see.

Q. Because you were talking about months before and stuff.

A. Yeah. Probably months in between. I would have to say this was -- I'd probably have to say maybe the beginning of May was the real big tree in the front that he did help at the end cut up.

Q. May of what year?

A. The same year, 2011.

Q. I need you to say it, though. I don't want to say it.

A. Okay. May 2011.

Q. Okay.

A. And the apple tree, too, it was in 2011 and it was probably shortly after that. Maybe the beginning of June.

Q. Okay. Very good. Is the apple tree kind of a smaller fruit tree that we are talking about then?

A. Yes. It was probably like that, the trunk, yeah.

Q. I get it. Maybe about 6 or 8 inches?

A. Yeah. Diameter.

Q. Diameter.

A. Yes.

Q. So the first tree that Paul had to cut or the first use of a chain saw on your property before Paul's accident would have been that same year a month before?

A. Uh-huh.

Q. Yes?

A. Correct. Correct.

Q. All right.

A. Yes.

Q. And that was where the big tree in the front was taken down already, Paul didn't -- or Dave didn't have to do that, right?

A. No.

Q. Is that right?

A. Correct. He did not cut it down.

Q. But you asked him -- you asked Dave to cut up the trunk after the tree was already cut down; is that right?

A. Can I elaborate on that and say something?

Q. Well, you can elaborate any time you want but I'd first ask you to answer my question so that the answer is shown on the record.

A. No. I did not ask him to cut it.

Q. Okay. What did you ask him to do?

A. But after the tree was removed, this big huge tree by a tree company, there was a big huge stump out there and what happens is they didn't take the wood away because that would cost extra money and we knew that Paul would probably want it for his fireplace which he did and these things were huge so they were cutting them into smaller pieces.

Q. Who is "they were"?

A. My son and Paul.

Q. So the stumps were left by the tree company in May 2011 after they cut the tree down --

A. Uh-huh.

Q. -- and Paul and Dave you didn't ask them to but they -- Paul wanted to keep some of that wood so he asked Dave and they worked together to cut up those stumps?

A. Right. To cut up the big rounds. You know, they took away branches and stuff but they left big chunks and that's what they cut up.

Q. You mean "they" took away, the tree company took away the branches?

A. Right. The branches.

Q. But left the stumps?

A. Okay. The stump. Well, the stump, right. The stump. Yeah. The stump is still there.

Q. Well, there is other little stumps that are cut apart, right?

A. Yeah. They were trunks of the tree, you know, yeah. Uh-huh.

Q. All right. So after the tree company cut the tree down in May of 2011, there were sections of the tree that were cut up by the tree company that were left behind?

A. Correct.

Q. And Paul and Dave cut them up so Paul could use it as firewood at his house?

A. Yes.

Q. Do you know if Paul was using a chain saw during that time?

A. Well, it was his chain saw.

Q. But you know what I am asking, right?

A. Yeah. You know, I can't really remember if they were both doing it or --

Q. All you have to say is I know or I don't know.

A. I don't know. I really don't know.

Q. That's all you got to say and I will move on.

Had you ever seen -- Before Paul's accident, had you ever seen Paul use a chain saw?

A. No.

Q. Okay. So whether he used it properly or dangerously prior to Paul's accident you don't know if Paul did or didn't?

A. No.

Q. You seen Dave use it on occasion before Paul's accident as we already talked about, right?

A. Right.

Q. Did you believe he used it safely?

A. Yes.

Q. Ever see him use it unsafely, this chain saw?

A. No.

Q. Okay. Other than Paul and yourself, is there anyone else Paul -- I'm sorry. Other than Paul, Dave and yourself, is there anyone else that would have to your knowledge seen Dave use a chain saw before Paul's accident?

A. Well, I'd have to say no because I can't remember actually.

Q. That's fine.

A. I seen him cut the tree.

Q. I'm not asking you to put your name in there.

A. Nobody else, no.

Q. Okay. How long did Paul and Dave work on those tree sections cutting them up? How long did that take? One day, more than a day?

A. Couple hours.

Q. Okay. So just one day then?

A. I believe.

Q. Okay. And was anything left after they cut those stumps up?

A. No. Paul took it all.

Q. Okay. Did he pay you for it?

A. No. I gave it as a gift. He said he wanted it.

Q. Very good. Okay. But who cut it up with the chain saw you don't know, right?

A. I don't remember if they both did it or if David just did.

Q. Okay. Do you know -- Again, I am just asking what you know. If you don't know, you can just say I don't know.

Do you know between Paul and Dave before Paul's accident who was more experienced on the chain saw?

A. No.

Q. Okay. Then after that big tree in the front was cut up, there was the apple tree that was cut up shortly after that, right?

A. Correct.

Q. Also in May or June of 2011, right?

A. Correct.

Q. And that is a 6 to 8-inch diameter and were there any branches off the tree had to be cut up or just the tree cut down?

A. No. There was branches.

Q. Okay. Do you know -- Did you see that being cut down?

A. Yeah. David was out there trimming.

Q. Who cut the apple tree down?

A. David did.

Q. Did Paul -- Was Paul involved in the apple tree being cut at all?

A. I believe no.

Q. Okay. So David did all that work?

A. Yes.

Q. How tall was that apple tree?

A. As tall as my house, 20 feet.

Q. And, again, that might have taken a couple hours and that was over then?

A. Yes.

Q. And who took the wood from that tree?

A. I believe we put it in the back. We have it piled up.

Q. Okay. So that was -- Those are two tree projects that we just talked about in May or June of 2011, right?

A. Correct. Yes.

Q. The third project is the two trees that you said were in the backyard that you wanted to put a shed back there so you wanted those trees cut down, right?

A. Yes.

Q. And that was a project where you asked Dave to do again, right?

A. Yes.

Q. You didn't ask Paul to do it, did you?

A. No.

Q. Okay. Sometime in June you told Dave, hey, we need those two trees cut down in back, right?

A. Correct. Yes.

Q. And you asked him to do it, right?

A. Right.

Q. And he said he would do it for you?

A. Right.

Q. Okay. And the reason they had to be cut down is you wanted to put a shed back there?

A. Right, and we didn't want to of course put a shed up first and then take the trees down.

Q. Right. I understand. Okay. What was the diameter of that -- of the two trees that were the evergreens that were going to be taken down, if you know?

A. Well, I'd have to say that they were probably both at least 60 feet tall.

Q. Okay.

A. And the base of them was -- I don't know.

Q. A foot or so around?

A. Yeah. Maybe more.

Q. Well, if you measure -- Hold on.

A. Okay.

Q. If you measure it from one side to the other side, is that about a foot wide?

A. No. It was more.

Q. More than a foot wide?

A. More than a foot wide.

Q. A foot and a half wide?

A. Yes. At least.

Q. Both of the trees were the same size?

A. About the same.

Q. Okay. Okay. And when Paul's accident occurred, had both of the trees already been cut down?

A. David had gone up the trees by, you know, and cut down --

Q. We are going to start there later, but I am asking you right now by the time of Paul's accident, were both of the evergreen trees already cut down or was he going limb by limb?

A. David was cutting limb by limb but I believe Paul came over when David needed him to help him.

Q. You are going too far away. I am just asking

you right now at the time of Paul's accident what the condition of those two standing evergreens were. Were they both still standing?

A. There was branches on the ground already.

Q. Were the trunks still standing?

A. Okay. Yes.

Q. Okay. That's what I am trying to find out.

A. Okay.

Q. Do you know the process Dave was choosing to cut the trees down? Was he going first up the tree and cutting the limbs down first and then he was going to do the trunk or do you know?

A. He was going up the tree and cutting down the branches.

Q. Okay. And then after the branches were cut down, he would take the bases down and cut the trunks down?

A. He didn't do that. We hired someone to take the tree down the rest of it because they were so tall.

Q. I got you.

A. Okay.

Q. So you asked Dave then his job with regard to these two evergreens in the backyard was just to take the branches down?

A. Yes.

Q. Right?

A. Correct.

Q. And since the trunk was so big, you didn't want Dave doing that because this was a big project. You had a tree company come in to do that.

A. Right.

Q. Okay. And I am assuming there is countless branches on both of these evergreens, right?

A. Right.

Q. Do you know the size of the bigger branches that came off the tree?

A. Probably at least that big.

Q. Maybe about four inches from one side to the other, yes?

MR. BARCH: I want to get -- I think we are just -- I want to make sure that you are giving estimates when you are or an accurate number. Just clarify for when you are estimating or not. I don't want you guessing.

BY MR. MAST:

Q. Now listen, I know you didn't go out with a tape measure. What I'm asking is if you can estimate. If you can't, if it's just a guess, then fine but hold

on. Let me ask the question.

My question is: If you put your fingers on both sides of the heavier bigger branches on these evergreens and you measured one finger to the other --

A. Right.

Q. -- what is the approximate distance you think you'd have for the width of those branches, the bigger ones?

A. I would say maybe three inches.

Q. Okay. All right. And those would have been -- the bigger ones would have been at the bottom or closer to the base of the tree, the thinner ones up at the top, right?

A. Yes.

Q. Okay. Now, and, again, if you don't know, that's fine. I keep saying that because I don't want you to guess but I am trying to find out what you know. So my question is: By the time of Paul's accident, the day of Paul's accident, was that the first day Dave was beginning work on those two trees?

A. It's been awhile and I really can't remember. I think he did come by the one day to start it and because there was all these branches piled up, then Paul came over the next day and helped.

Q. Okay. And I think that might have been even what he said so that sounds accurate.

A. Yeah, because he had to go someplace that day.

Q. So Paul to your knowledge -- Strike that.

To your knowledge, Dave had worked out at your house on these two evergreens the day before Paul's injury cutting some branches down.

A. Right.

Q. And then Paul came over the next day to help?

A. Right.

Q. Is that your understanding?

A. Yes.

Q. Okay. Did Dave ask you if Paul could come over and help or did he ever go through that with you or did he just do that on his own?

A. He did it on his own.

Q. Were you going to pay Paul or not Paul. I keep getting the names mixed up.

Were you going to pay Dave to do this work for you?

A. He came over as a favor of my son to cut the trees down and for his time I was going to give him something for gas. He had to come up, you know, from

his house and that I was going pay him something.

Q. Was it predetermined what you were going to pay him?

A. No. I didn't know. I just figured I'd give him something.

Q. Like 20 bucks or something for gas?

A. Money to just --

Q. So you were going to pay him, how much, you don't know and it wasn't going to be a large amount, fair enough?

A. Right. Yes.

Q. So the first day that Dave started the work the day before Paul's accident was cutting some branches down from the two evergreens?

A. Yes.

Q. Was he starting on one evergreen first or was he going to do both kind of in tandem together, if you know?

A. Well, there was a big pile of branches. I really can't remember if when Paul came in both were already trimmed up or if he had just done one of the bigger ones.

Q. So the answer is I don't know.

A. I don't know.

Q. Okay.

A. Right. I can't remember.

Q. All right. So the next question is: When Paul came over the next day of this tree work that Dave was doing, the status of the trees and how far up one or more of them were cut you don't know; is that correct?

A. Correct.

Q. Okay. But by the time Paul got there the day of his accident, the second day in to doing the work, some branches Dave had already cut the day earlier?

A. I can't remember. I don't know.

Q. Were there some branches on the ground already?

A. They were on the ground but as he was cutting and they were just falling down, okay?

Q. Right.

A. But I don't remember if he actually had started to cut up branches himself that very first day he was there, that it was just one big pile.

Q. Okay. And maybe I didn't word it properly but my question was: By the time Paul arrived at your house on the day of the accident, there were already branches that had been cut down from the tree that

were on the ground?

A. Right.

Q. Were they piled up yet or were they all just scattered on the ground?

A. I don't remember.

Q. Okay. And you don't know -- I think what you were saying is you don't know if Dave had already begun to cut up those branches that had been cut down from the tree or whether they were still all together in full lengths, right?

A. Yes.

Q. Okay. Do you know when Paul arrived at your house the day of his accident?

A. I can't give you a precise time. It was probably later morning, early afternoon.

Q. Other than late morning, early afternoon, that's as specific as you can give me?

A. Right. I can't give you a time exactly.

Q. Okay. Late afternoon -- Late morning, early afternoon seems to be around 12:00 or 1:00. Does that sound about right?

A. Yeah.

Q. And did you greet or see Paul when he arrived first at the house?

A. I saw his truck in front so I knew he was over.

Q. But how long he had been there when you first saw the truck you don't know; is that correct?

A. I don't remember, no.

Q. Is that correct then what I just said?

A. Correct. Uh-huh.

Q. Okay. All right. When you saw Paul's truck out in front, that would have been the 12:00 to 1:00 kind of timeframe?

A. Right.

MR. BARCH: Well, I need to object. It's an approximation. I don't want it to be looked at we are using that as if that is the time so I object to form of the question.

BY MR. MAST:

Q. I said earlier we are thinking somewhere around 12:00 to 1:00 generally, fair enough?

A. Yes.

Q. And that's the first time you saw Paul's truck in your drive, correct?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. So whether Paul was there before you saw his truck or how long you saw his truck, you don't know, correct?

A. No.

Q. Is that correct?

A. Correct.

Q. What Paul was doing by the time you saw his truck around 12:00 to 1:00 generally out at your property, you don't know, correct? Is that correct?

A. Correct.

Q. Okay. You know he was helping Dave but exactly what Paul's tasks were, do you know?

A. No.

Q. Did you at any time that day before Paul's accident observe their work?

A. I went out there to give them some water because it was a hot day but that was it.

Q. Did you go out there to give both Paul and Dave water?

A. Yeah. I gave them water.

Q. A glass of water?

A. Probably a bottle, like this.

Q. Okay. And how many times did you do that before Paul's accident?

A. Maybe once. I don't exactly -- Once. Say once.

Q. Okay. Okay. And when you went out there, how long were you out there?

A. Probably a few minutes. I talked to him. Said hello and --

Q. Were Dave and Paul working at any point while you were out there giving them water?

A. No. Not that I can remember, no.

Q. Okay. So what Paul's tasks were doing -- Strike that.

What Paul's tasks were during the work and what Dave's tasks were during the work, you did not observe; is that correct?

A. Correct.

Q. All right. So now I am going to summarize this, and you can correct me if I am wrong, but before Paul's accident, is it fair to say you only went out of the house and saw what they were -- saw the progress of the work once; is that correct?

A. Correct.

Q. And that was to deliver water to him for a couple of minutes you were out there?

A. Correct.

Q. And during the time you were out there for a couple minutes delivering water that one time, you did not see either of them do any work that you can recall, correct?

A. Correct.

Q. Okay. So as far as who was doing what work before Paul's chain saw accident on your property that day, you don't know who was doing what, correct?

A. No.

Q. Is that correct?

A. Correct.

Q. Okay. When you say no, that's why I have to ask to make sure you understand my question. Is that correct?

A. Correct.

Q. Okay. Do you know if Paul -- at any point that day of his accident at your house, do you know if Paul operated that chain saw that they were using to trim these branches, do you know if he did?

A. No.

Q. Okay. You know that Dave was using the chain saw, correct?

A. Yes.

Q. Okay. Other than the chain saw -- Well,

strike that.

The chain saw Dave was using to cut the branches up at your house the day of Paul's accident, was that the chain saw that was your chain saw?

A. Yes.

Q. Do you know if Paul had his own -- Strike that.

Do you know if Dave had his own chain saw?

A. Not with him.

Q. He had his own but it was at home, right?

A. Yes.

Q. Okay. Instead of him bringing his chain saw, he used yours, right?

A. Yes.

Q. Is there a reason he decided to use yours as opposed to bringing his own?

A. Ours was new.

Q. Is yours the one that's sitting here on the table today?

A. Yes.

Q. Okay. At the time of Paul's accident at your house with the chain saw, did you own more than one chain saw?

A. We have an electric one in the basement but we didn't use it.

Q. Okay. So at the time of Paul's accident --

A. Yes. I'm sorry.

Q. Once I start I am assuming you are done. Okay. At the time of Paul's accident, you owned and had available to use an electric chain saw and a gas chain saw, correct?

A. Yes.

Q. The electric chain saw was in the basement and was not being used for any of the work that Dave and Paul were doing, correct?

A. Yes.

Q. All right. Why was that not being used?

A. It wasn't big enough and the chain on it was dull.

Q. Okay. So Dave chose to use the gas one at your house, correct?

A. Yes.

Q. That was by his choice. You didn't make him, did you?

A. No. I didn't make him. Yeah. I know you don't want me to elaborate. No. He chose to use that one. It was new and it had never been used and the

blade was sharp.

Q. And, again, it's not that I don't want you to elaborate. I want you to elaborate if you think it's necessary. All I am saying is if you are not answering the question, then I need to ask the question again, okay? Okay. You can say whatever you want to say, okay?

A. Okay.

Q. So the chain saw we have today here on the table is the gas chain saw that Dave was using to cut up the branches when Paul was injured, correct?

A. Yes.

Q. Okay. And this was the only gas saw you had present and available and that you owned on your property at the time of Paul's injury, correct?

A. Yes.

Q. Had Dave ever used this particular chain saw before the day of Paul's accident?

A. I can't remember if he actually did use it to cut up the apple tree or not. I don't remember.

Q. When you say it was new, you mean it was -- Wait. I just started my question.

When you say this chain saw was new as of the day of Paul's accident, are you saying it had

never been used or you don't know if it had been used?

A. I don't remember. All I know is it was new and we bought it in that year.

Q. You bought it in 2011?

A. Yes.

Q. Where did you buy it from?

A. It's on the manual inside the date where it was purchased at and everything.

Q. I am asking you.

A. I don't remember but it's written on the manual so if you want that information, I don't know.

Q. Listen, I can get it anyway. I am asking you. If you don't know, you can just say.

A. I don't remember. It was just in 2011 we purchased it.

Q. All right. And why did you purchase it?

A. Because we had trees that we knew needed to be cut down.

Q. Okay. Did you purchase it, however, though, for you or your husband to use or for somebody else to use that might have to use on your property?

A. I guess we purchased to have a chain saw that worked well and was new and had a sharp blade and I didn't particularly buy it for, you know what I mean,

say, oh, I am buying a new chain saw here. We bought it because we needed a chain saw.

Q. This is my question: I'm sorry if you think my questions are funny but my question is this: Did you purchase it expecting that you or your husband was going to use it or that somebody else other than you and your husband were going to use it?

A. Someone else.

Q. Okay. Not necessarily Dave but somebody else other than you and your husband?

A. Right.

Q. Okay. And whether this chain saw, this gas chain saw, that you purchased new in 2011 had been used prior to cutting these two evergreens down in June, 2011 you are not sure, correct?

A. I don't remember, no.

Q. Okay. If it had been used prior to the two evergreens, that job in June of 2011, it had only been used once before and that might have been the apple tree job, correct?

A. Yes.

Q. Okay. Where these evergreens were and where Dave and Paul were working, that would have been in the backyard of your house?

A. Yes.

Q. If you -- What were you doing that day? I am sure you were in the house, correct?

A. Right.

Q. You weren't working outside, were you?

A. I was outside for awhile playing with his dog in the backyard but, I mean, I didn't stay out there for any length of time and I was in the house most of the time.

Q. Okay. So other than delivering water to Paul and Dave before Paul's accident and maybe being out of the house to run around with the dog for a few minutes, everything else, all of your other activities would have been inside the house that day, correct?

A. Yes. Yes.

Q. Okay. And if you ran the dog outside for a few minutes, do you recall doing that before Paul's injury or not?

A. Yeah.

Q. Do you know how long? It was just a few minutes?

A. Yeah. Probably. I mean, just throw a ball around and get a bone.

Q. And would that have been near where Dave and

Paul were working?

A. Yeah. I mean, my yard is not that big. Yes. It's near.

Q. Okay. Do you recall having any observations of what they were doing at the time you were outside playing with the dog?

A. No. I don't remember. No. I would say no.

Q. Okay. Was that after you saw Paul's truck in the drive that you said you first noticed Paul would have been over by that time around 12:00 or 1:00, somewhere around there?

A. Yes. It was after I was out there with the dog.

Q. Okay. Do you know about what time -- How did you first learn Paul was injured?

A. They came running in the house. He was bleeding and I gave him a clean towel to wrap around his arm and David drove him to the hospital in Paul's truck.

Q. Okay.

A. It was fast. I mean, they didn't waste any time getting to the hospital.

Q. Okay. We are going to go through all that step by step. About what time was that that Paul ran

in the house?

A. I don't remember. It was maybe an hour, maybe it was 2:00. I don't know, an hour later.

Q. An hour later meaning -- hold on -- an hour after you first saw Paul's truck was in the drive around 12:00 or 1:00 or approximately sometime around there?

A. Right. They were working.

Q. So I am trying to get the chronology of this and I understand it's not exact, I get that, but you are saying again very generally 12:00 or 1:00 was when you saw Paul's truck in the drive. An hour from whenever that was later was approximately when Paul ran in the house and said he was injured?

A. Right.

Q. And he was bleeding from what arm, if you know?

A. I don't remember. I think it was his right arm.

Q. Okay. You are not positive or are you sure about that?

A. I am not positive.

Q. Okay. Hold on a minute. All right. So during that approximate hour time that you knew Paul

and Dave were working on those -- on the trees, you had been out there just a couple minutes outside running with the dog and then delivering water during that one hour time?

A. Yes.

Q. Okay. Were you doing anything in particular inside the house?

A. What I usually do every day.

Q. What's that?

A. Dishes, wash clothes, clean up, whatever. I don't remember, you know, but working inside the house, yeah.

Q. Okay. What was your husband doing?

A. Probably watching television.

Q. Okay. Do you remember what day of the week this was?

A. I think it was during the week.

Q. And I didn't ask you this before but are you retired?

A. I am.

Q. Okay. Is your husband retired as well?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. Okay. What kind of work did you do before you retired?

A. I worked at Intermatic.

Q. What is that?

A. It was in Spring Grove. I worked in production.

Q. What kind of company is that?

A. They made lighting sets, timers.

Q. Is that like factory type work?

A. It was factory, yeah.

Q. Okay. And what was your husband's kind of job he did before he retired?

A. He was a carpenter.

Q. Okay. I didn't even ask this. William, how old is William?

A. He was born in 1953. He will be 60 this year.

Q. Okay. Is he in good health?

A. Huh?

Q. Is he in good health?

A. He is on Social Security disability.

Q. For what kind of disability?

A. For he got injured at work.

Q. What?

A. His back.

Q. Okay. So he is not able to be real active?

A. No. He can't lift up heavy things.

Q. That's what I am trying to understand.

A. Yeah.

Q. Okay. Are you healthy?

A. Yeah. I am all right. I am living. That's about it.

Q. Do you have any disabilities?

A. No. I am not -- I am on Social Security but -- Okay. No. I am not.

Q. All right. Let me just ask the question. Do you have any physical disabilities whatsoever?

A. I am okay.

Q. Okay. All right. The work that you were doing in the house, if you wanted to, would you have been able to just look out the window and see the work that Paul and Dave were doing or were they doing it at a spot where you really couldn't see them?

A. I couldn't see them.

Q. So even in the house had you looked out a certain part of the house, you wouldn't have been able to visualize them outside working; is that correct?

A. Correct.

Q. Okay. So in order to see what they are doing, you'd have to go outside and take a look?

A. Yes.

Q. Right?

A. Yes.

Q. And you didn't do that except for when you went to deliver water. That's the only time you went outside in the area where they were working, correct?

A. Right and played with the dog twice. That was it.

Q. Right but playing with the dog you weren't even paying attention to what you were doing, correct?

A. Yeah. I was paying attention to the dog. No, I wasn't.

Q. Is that correct?

A. Yes. That's correct.

Q. So the only time you would have been in the area to observe what they were doing is when you delivered the water?

A. Right.

Q. And that's the time you remember telling me you don't remember seeing what they were doing; is that correct?

A. No. I don't remember.

Q. Is that correct?

A. Correct. Correct.

Q. All right. Did your husband ever go outside while Dave and Paul were working?

A. I don't remember.

Q. Okay.

A. I don't remember.

Q. Did you ever talk to your husband about the incident with Paul?

A. You mean about this whole thing?

Q. Yes.

A. Yes.

Q. Well, not --

A. Oh.

Q. Hold on. Not about what happened as a result of the incident, meaning the lawsuit and things like that. I am asking about did you ever talk to your husband about how the incident may have occurred?

A. I probably -- Well, I wasn't there to see it so I couldn't really tell him how I thought it happened.

Q. Well, did you ask him if he saw it or --

A. He didn't see nothing, no.

Q. Okay. All right. When Paul came in, ran in

the house as you described from being injured --

A. Right.

Q. -- you offered him to wrap his arm?

A. Yes.

Q. And then so how long was he in the house physically or did he just run in and run out with Dave?

A. I have to say it might have been a minute. I ran immediately, got a clean towel, put it on his arm and they went to hospital.

Q. Did you visualize the injury? Did you see it?

A. I could see the cut.

Q. That's what I am asking.

A. Yes. I could see the cut.

Q. How long was the cut?

A. Probably like this I would think.

Q. About six inches or so?

A. Yeah. He -- probably like that on the forearm.

Q. Approximately six?

A. Yeah. Maybe on his forearm.

Q. And did you do anything to determine how deep the cut was?

A. No. I got a towel and no, I didn't.

Q. Okay. All right. So although you know it's about six inches long, you don't know how deep it was; is that correct?

A. No. I don't know.

Q. Is that correct?

A. Correct.

Q. After wrapping it, and this is all within a minute, Paul runs out with Dave and Dave takes him to the hospital?

A. Correct.

Q. What hospital?

A. McHenry.

Q. NIMC?

A. Yes. NIMC.

Q. Do you know how long they were at the hospital?

A. Well, I called -- I don't know. I don't know. I called the hospital to see.

Q. What?

A. I called probably after they got there. What does it take, 15 minutes to get there. Maybe a half hour or something I called after.

Q. Just to find out the status?

A. Yeah. See how he was doing.

Q. Did you learn anything?

A. Yes.

Q. What did they tell you?

A. In the emergency room they told me that as far as they could -- their knowledge, he didn't have any damage done other than a superficial wound that they would clean up and stitch up and give him medication, you know, for pain and antibiotics for infection.

Q. That's what the nurse people told you, the people attending in the ER?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. Okay. And then did you -- Did Dave or Paul have a cell phone with them when they went to the hospital?

A. I can't recollect for sure.

Q. Does Dave have a cell phone?

A. Yes, he does.

Q. Did he have it at the time?

A. I don't remember.

Q. Okay. Did either of them -- Well, strike

that.

After Dave and Paul went to the hospital right after the accident occurred, did you hear from either of them while they were at the hospital?

A. No. When they came back, no.

Q. Okay. It wasn't until they came back from the hospital?

A. To my house.

Q. Was that Dave or both Dave and Paul?

A. Both Dave and Paul were at my house afterwards.

Q. Do you know how long that was after the time they left to go to the hospital that they arrived back at your house?

A. The length of time he was gone I am not quite sure.

Q. What did you say?

A. I am not quite sure. Maybe an hour and a half or something I mean by the time they did their job and --

Q. Okay. All right. So it's your understanding that Paul was injured, he runs into the house. Does Dave run into the house, too?

A. He is right behind him.

Q. So they both run into the house, right? Yes? Yes?

A. Yes.

Q. You wrap the arm, then they run back out. They go to the hospital. They are at the hospital approximately, and I know you didn't time it, but approximately an hour and a half at the ER?

A. Uh-huh.

Q. And they come back to your house, correct?

A. Correct. Yes.

Q. And then Paul and Dave come into the house again?

A. Yeah.

Q. Okay. And do you sit down and talk to him or what happens?

A. Well, Paul needed medication to have refilled and he didn't have any insurance and didn't have any money on him so I gave him $50 to go get the prescriptions refilled.

Q. Okay.

A. Not knowing how much they would cost but you know.

Q. So as I understand it, Paul comes back to your house from the ER and says, hey, I need to refill

this prescription for pain medication and don't have any money and you give him $50?

A. Yes.

Q. Okay. So he asked -- Did he ask -- Hold on. Did he -- It looks like you want to talk. Did he ask you for the $50 or did you just offer it to him?

A. I offered it to him. He didn't ask.

Q. How long was Paul in the house when he returned from the ER until he left to get the prescription filled?

A. They weren't there maybe a few minutes and they went to the drug store.

Q. So Dave then took Paul in Paul's truck and went to the drug store to fill the prescription?

A. Uh-huh.

Q. And then when Dave returned, did he return alone or with Paul again?

A. I believe he took Paul home.

Q. Right.

A. And he could walk from Paul's house.

Q. Right. So it's your belief that Dave would have walked from Paul's house back to home and that's when he arrived home then?

A. Right.

Q. Was that within the hour?

A. I don't know how long he was at Paul's house once he --

Q. Okay. But after Dave and Paul left in Paul's truck to go fill the prescription, Dave then returned next alone to the house, right?

A. Back to my house.

Q. Yes.

A. Yes, because he --

Q. So it was your feeling that he probably dropped Paul after and left the truck at Paul's house?

A. Yeah. It was his truck. Paul's truck.

Q. I understand.

A. Okay.

Q. All right. Okay. Now, let's go back a little bit and let me ask a couple follow-up questions. When Paul ran into the house after the accident, okay --

A. Uh-huh.

Q. -- with the injury, did he say anything about how it happened?

A. There wasn't time. No.

Q. I understand there might not be time. I am just asking if. If they didn't you can just say they

didn't.

A. No.

Q. Let me ask the question again because you didn't answer it directly. When Paul arrived into the house --

MR. BARCH: I know you are frustrated with the way she answers questions but I think she is trying her best.

MR. MAST: There is no question she is trying her best.

BY MR. MAST:

Q. I'm not saying you are not trying your best.

A. I'm sorry. I know.

Q. You are doing fine actually. It's just actually when you do answer it kind of indirectly, I need to go back and I'm telling you why I need to go back. You are doing fine. There is no problem with what you are doing. I just need you to understand why I am asking the question again.

So when Paul runs in the house after being injured for the first time, I think you said Dave followed, right?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. You saw the injury, you wrapped it and then they left immediately to go to the hospital, right?

A. Yes.

Q. During the time after the accident before they left to go to the hospital, did Paul say anything about how the accident occurred?

A. No.

Q. Did Dave say anything how the accident occurred?

A. No.

Q. So by the time Paul and Dave left to the hospital to the emergency room to treat Paul's injury, you did not know how it happened other than you assumed I am assuming you felt it was probably due to the chain saw, right?

A. Yes.

Q. But you didn't know that?

A. No.

Q. And they never -- either of them never told you how it happened, correct? Is that correct?

A. Correct.

Q. Okay. So they are at the hospital. You don't talk to them now until they arrive back at your

house after the ER, right?

A. Correct.

Q. And they are only there for a couple of minutes until they go fill the prescription for pain medication, right?

A. Right.

Q. And while they are there for a couple of minutes at your house before filling the pain prescription, does Dave or Paul tell you anything more about how the accident occurred?

A. No.

Q. Okay. I am assuming you put the dots together and you felt it was because of the chain saw but nobody told you that, fair enough?

A. Correct. Right.

Q. Is that correct?

A. Yes.

Q. Okay. So by the time Dave now returns home alone after dropping Paul off, you have not yet heard from Dave or Paul at that point how the accident occurred; is that correct?

A. Well, Dave would have had to come back to my house.

Q. That's where I am starting this question. By

the time he returns to your house, by that time you still have not talked to either of them about how it happened, correct?

A. No.

Q. Is that correct?

A. Correct.

Q. Okay. So Dave returns to your house alone and we are probably talking now, what, in the evening hours?

A. Yeah. Early evening.

Q. Maybe 4:00 to 5:00, somewhere in that general area?

A. Right. Yes.

Q. Okay. 4:00 to 5:00 p.m., Dave arrives home approximately and is there a conversation about what happened?

A. I can't remember.

Q. Okay. Any time the rest of that day does Dave make any statement about what happened?

A. Can I say something?

Q. Sure. If you want to.

A. In the aspect of all this thing happening so fast, coming into the house, literally wrapping his arm and rushing him to the hospital because he was really

concerned, when they came back to the house, they were only there a few minutes also. I gave them the money. When David came back obviously he drove Paul home because it was his truck, he came back to my house because that's where his car was, he was all upset and everything. I don't remember that anything really was said, you know, that Paul -- you know, little bit about Paul, you know, as far as not how the accident happened, how he was doing, you know, and that they got the prescriptions and then he went home but he didn't ever at that point at that time on that day, so.

Q. All you are saying then in summary is Dave never mentioned how the accident happened?

A. Not on that day.

Q. Hold on. You got to let me finish my question -- my statement. All you are saying is on the day of Paul's accident at no time did you hear from Dave or Paul for that matter how the accident occurred?

A. No.

Q. Is that correct?

A. Correct.

Q. Okay. So even when Dave arrived back from dropping Paul off, he stayed, what, for a few minutes?

A. Yeah. He didn't stay long. I can't really remember, you know, but he probably did stay, you know.

Q. Stayed for awhile?

A. For a bit, yeah.

Q. Did he ever go back and finish the work up?

A. No. He went home.

Q. So by the time Dave left for now home the day of Paul's accident, he still never told you what his version of the accident was; is that correct?

A. No.

Q. Is that correct?

A. Correct.

Q. Did you see Dave the following day?

A. I can't remember but he must have come back because the branches. You know, this is a year and a half ago, no.

Q. Listen, Carolyn, you don't have to tell me why. I have been doing this long enough. I know that memories aren't the best sometimes so you don't need to tell me why. My job, though, is to find out what you know.

A. No, I don't.

Q. So I have to go through this with you, okay? So let's just get through this. You are doing the

best you can. Let's just keep going.

Did you ever at any time after Paul's accident at your house ever talk to Dave about how it happened?

A. Yes. He did tell me.

Q. Okay. How many times have you talked to Dave where you heard Dave's version of it? Just once or more than once?

A. Maybe more than once.

Q. How many times?

A. I don't know. Twice.

Q. Okay. When was the first time after the accident that you spoke to Dave about how it happened? The next day, days later, how soon after the accident?

A. I don't remember.

Q. Do you know if it was within days of the accident?

A. No. I don't remember.

Q. Okay. Was it within at least a month after the accident?

A. Yeah. Probably.

Q. Okay. And was it at your house?

A. Or was it on the phone. I don't remember if it was.

Q. So it was either in person or on the phone?

A. Right.

Q. Okay. Do you know if anybody else was a party to that conversation meaning overheard that conversation?

A. No. Just me.

Q. So Dave would have either called you or he would have been at your house and he would have told you this, right?

A. Right. Correct.

Q. Okay. What did he tell you?

A. What happened. That he was out there with Paul, that Paul was helping him. David was using the chain saw and Paul was holding the branches and they had been cutting out there for awhile branches and everything seemed to be okay and then the one branch that when the accident happened that Paul was holding, Paul had repositioned his hand at the split second and moved his hand up on the branch because I guess it was flexing and he just instantly and then David was in the position, it only takes a second and that's how he ended up injuring his arm because Paul had moved his hand out of the position.

Q. So Dave blamed Paul for the accident then?

A. If he didn't move his hand -- They had been cutting for an hour and everything was going fine until this one incident happened, yeah.

Q. So the reason for the accident then according to Dave was because Paul was moving his hand and he didn't know he was moving his hand and he cut the hand or the arm with the chain saw, correct?

A. Right. Right.

Q. And, again, and if you don't know, that's fine but you don't know how long after the incident occurred that Dave first told you this, do you?

A. Well, it wasn't that day because he was all upset.

Q. I am just asking how long, if you know.

A. I don't know. Maybe a couple weeks. I don't know or next week, the week after.

Q. Okay. And you said maybe a couple times Dave had told you this, correct?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. When was the next time?

A. Well, I don't know. He probably told -- I don't know. Maybe before -- Well, I think it was

probably before he got the letter from you in December, you know. Up to that point, you know, he just thought that things would not end up this way not knowing, you know, and then when he found out the way he knew it happened and he told me and he knew what Paul had said the way it happened, he was kind of upset.

Q. Okay. But my question was: When is the next time you spoke to him? Hold on. You got to let me --

A. I am thinking.

Q. My question is: When is the next time after this first time of one or two weeks after the accident when is the next time you heard Dave express his version of the accident?

A. Probably a couple months went by.

Q. Okay. And that was after he heard Paul's version of the incident or not?

A. I think so. Yeah.

Q. And Dave got mad after he heard Paul's version of the incident?

A. He was kind of upset.

Q. Did he tell you why he was upset?

A. For what's written -- because he figured if Paul hadn't moved his arm forward to reposition on the branch David would have never cut him.

Q. Is that what Dave said to you?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. See, this is what I am trying to find out. I am trying to find out everything that Dave said describing the incident and his feelings versus Paul's version of the incident. That's what I am trying to find out.

A. Right.

Q. I don't want to know your version. I want to know what Dave said.

A. No.

Q. So Dave told you he is upset because he heard of Paul's version which is different from his version of the incident, correct?

A. Uh-huh.

Q. Is that correct?

A. Yes.

Q. Anything else that Dave discussed with you regarding how the incident occurred or his feelings regarding how Paul described the incident?

A. No. I mean, no. He just -- What he had said what his version was and knowing what Paul had said.

Q. Do you know what Paul's version is? Do you?

A. Well, I don't know if I put my foot in my mouth now because --

MR. BARCH: I think he is asking you what you have heard about Paul's version.

THE WITNESS: The version that I know is that Paul is saying that he was holding the branch and threw it down on the ground, that David had revved up the chain saw and came towards him to cut the branch that he didn't even have. He had already thrown the branch down on the ground. What would that make it seem like, David didn't even see his arm was there and that the branch --

BY MR. MAST:

Q. Carolyn, I don't want to get into an argument about what happened, okay. That's not my purpose here. What I am trying to find out is who told you what, when and how. Okay. That's what I am trying to find out. What you think makes sense or what I think makes sense is not the topic today, okay.

The version that you just described, whose version is that?

A. That's what Paul had said in his -- one of his -- Paul had said.

Q. In what? When did he tell you?

A. No. To your -- you, to the lawyer or in some kind of --

Q. How do you know that?

A. Because my lawyer told me.

Q. Okay. All right. Sorry.

MR. BARCH: Here's the thing, let me just say this, Carolyn, if he is asking you questions which require you to relate what I have told you --

THE WITNESS: Yes.

MR. BARCH: -- don't give that information. He is asking you about other people. Not about what you and I have talked about.

BY MR. MAST:

Q. All right. So let's go back. Okay. What I want to try to find out is this: I want to know everything Dave told you and everything Paul told you and everything anybody else might have told you other than your attorneys, okay? That's what I am trying to find out, three things. We have gone pretty far with regard to Dave so I am going to follow that up by saying: Have you told me everything that Dave has told you concerning the accident or Paul's injuries?

A. Yes.

Q. Is there anything else you want to add to that other than what you have already told me?

A. No.

Q. Regarding Dave now. Is that it?

A. Yes.

Q. Okay. So Dave has never told you more about what he thinks as far as Paul's injuries, nothing more? You have never told me anything about that.

A. You mean if David knew the extent of Paul's injuries?

Q. Yes. Has he discussed that with you at all?

A. He only knew, too, the day of when it happened what I had told him what I learned from the --

Q. ER?

A. -- from the hospital, from the ER.

Q. That's all Dave knows?

A. That's all he knew until all this started to unroll, right.

Q. Right. So you have told me now everything that Dave has ever told you regarding the incident and how it occurred and medically how Paul was injured from it, correct?

A. Yes.

Q. Okay. And there are only two times that Dave

really discussed the specifics of how it happened and both times he told you that Paul was shifting his hands when he was lifting this chain saw up and caught Paul on the arm, correct?

A. Correct.

Q. Okay. Dave never accepted responsibility for this accident then in your view, correct? He did not believe he was responsible for it; is that correct?

A. Correct.

Q. Okay. And he never accepted responsibility for it to you as far as you knew, correct?

A. Correct.

Q. Okay. How many times now have you talked to Paul about the incident after his accident?

A. I have never talked to Paul. The only time I talked to Paul was after it happened a few days and I went by to see how he was feeling and when he was going to get his stitches out and I maybe talked to him on the phone maybe once.

Q. All right. Well, see, this is my confusion. I asked you how many times you talked to Paul since the accident about this and you said I never had and you mentioned two times.

A. Well --

Q. Stop. Stop. So we got to go through those, okay? So it's your testimony that you only spoke to Paul twice after this accident?

A. Yes. Twice.

Q. Right?

A. Right.

Q. Not any other times than two times, right?

A. Just twice.

Q. Okay. Before the accident, let's say a year before the accident, how many times did you talk to Paul?

A. I don't know. A few times.

Q. Okay. So talking to him twice after the accident, is that within a year of the accident, after the accident?

A. The time span which I did talk to him was probably when it happened into the late part of the year. Well, no. It was probably when I first talked to him --

Q. You are not listening to the question.

A. I know. I am going off the edge again.

MR. BARCH: He is talking about a different timeframe than you are.

BY MR. MAST:

Q. From the day of Paul's accident during the time that you talked to him these two occasions about the accident, how much time elapsed? Just --

A. A couple weeks only.

Q. Okay. So the two times -- the two times you talked to Paul about his accident with the chain saw was within a couple of weeks of his accident, yes?

A. Right. Correct.

Q. And that would have been sometime still in July of 2011, right?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. And you have not talked to Paul since July, 2011 until today, correct?

A. I did in September.

Q. So there is another time?

A. He came by my house.

Q. September of what?

A. 2011, that year.

Q. So there is three times you talked to Paul?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. So since September of 2011, have you talked to Paul until today?

A. No.

Q. From the time of Paul's accident until today you have talked to him only three times?

A. Correct. Yes.

Q. Have they all been in person?

A. Two are in person.

Q. One was on the phone?

A. One was on the phone that I remember.

Q. Okay. All right. So let's start with the first time you talked to Paul after his accident about the incident, okay?

A. Uh-huh.

Q. You say that was a couple weeks later?

A. It was probably -- It's before he had stitches out even so it was within a week.

Q. Okay.

A. When I had seen him in person.

Q. And was it at your house or where?

A. At his house.

Q. You visited him?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. And how long were you at his house?

A. I don't know.

Q. Couple minutes?

A. Maybe. I don't know. I was visiting maybe an hour.

Q. Okay. And how much time did you spend of that hour talking about the incident?

A. I only asked him how he was doing.

Q. Okay. And what did he say?

A. He says that he seems he is doing okay but of course it hurts and I says, well, I can understand that, you know, and that was about it. He didn't go on and elaborate anything.

Q. Okay. At any time during that first visit with him, within a week of the incident, was it ever discussed how the accident occurred?

A. No.

Q. Okay. And other than him saying, okay, it still hurts, did you ever talk more about his injury?

A. No. Other than that one time I called him on the phone.

Q. No. No. I am just talking about --

A. No. No.

Q. You met with him --

A. No.

Q. When you met with him a week after the accident and visited for about an hour at his house, the only thing you talked about regarding his injury was, okay, it still hurts. That's all he said?

A. Right. Correct.

Q. So the rest of that visit was unrelated to this incident or his injury, correct?

A. Correct.

Q. It was just being friendly talk?

A. Uh-huh.

Q. Yes?

A. Yes.

Q. Okay. Who was present during that visit?

A. His mother.

Q. Was she -- Was she able to hear the words that were exchanged between you two?

A. She was sitting right next to me.

Q. Okay. Anybody else present?

A. I don't remember. I think she was just home.

Q. Did Paul ever suggest at any time since his accident that he was wanting you or Dave or anybody to

say something in order so that he can get a lot of money in the case? Did he ever say anything like that to you?

A. To me, no.

Q. Did he say it to somebody else?

A. You mean so he could -- Well, you can say it's hearsay again. How can I prove it? Paul had said something to David.

Q. And Dave told you that?

A. David told me that.

Q. So I understand that. I know that already but you didn't hear Paul say that. You heard Dave tell you that he said that?

A. Right.

Q. You knew they were -- Hold on. You are not -- you did not -- Let me say the question again. You have not heard Paul at any time say anything like that, correct?

A. Correct.

Q. You have not heard Paul ever say since his accident that he wanted to try and make money, he wanted to try to stay off of work, he wanted to try to get people to help him get the money or anything like that? You never heard any of those conversations from

Paul, have you?

A. No.

Q. Okay. You heard them indirectly from Dave to you, correct?

A. Right.

Q. Okay. So you are not a witness to what anything Paul said regarding those issues of trying to make money or trying to not have to work the rest of his life or any of those kind of things, you never heard any of those things from Paul, did you?

A. No.

Q. Okay. And the only person you have heard that from is from Dave, correct?

A. Right.

Q. All right. Wherein Dave said, hey, Paul told me he wants me to say this to try to get him more money, something like that?

A. Uh-huh.

Q. Right?

A. Right.

Q. Did you ever report that to anybody that Paul said that?

A. I don't know if I mentioned it to Ron or not.

Q. Your attorney?

A. Yeah. My attorney.

Q. Okay. Did you ever mention it to anybody else?

A. Well, if I mentioned it to my husband, he probably won't remember anything.

Q. Okay. Anybody else?

A. No.

Q. Okay. All right. So far we talked about that one visit, the first visit, with Paul after the accident about a week later, you had an hour over at his house and there wasn't a lot discussed about the accident, correct?

A. No.

Q. Correct?

A. Correct.

Q. Okay. The second time you met with him it was again in person?

A. Yes. It was in the end of September of 2011.

Q. No. I thought you met with him two times, though.

A. Yes. When he -- you wrote down three times in that year. It was three times.

Q. We are on the second time. September was the third time.

A. Okay. It was on the phone.

Q. Let's go back because now we are all unclear again because of that.

The first time you spoke to Paul after the accident was when you visited in his home about a week later for that hour for that visit, right?

A. Correct.

Q. The second time was on the phone call?

A. Yes.

Q. How long after that first visit with him was that phone call?

A. Not long. I can't say.

Q. A day, a week, a month, a year?

A. I don't know. Maybe two weeks.

Q. Okay. And that was a telephone call did you make to him or he made to you?

A. I called him.

Q. Why did you call him?

A. Just to see how he was doing. How -- He had his stitches out, you know.

Q. So what was said?

A. Well, he says the stitches are out and he seems he is doing okay and left it at that.

Q. Did he say he is recovered?

A. No. I can't -- No. No.

Q. Did you know if he still had problems with the injury or not or you don't know?

A. I don't know.

Q. Okay. How long was that conversation on the phone?

A. Probably a few minutes only.

Q. Did Paul ever discuss the specifics of how his chain saw accident occurred?

A. No. Not to me, no.

Q. Did he tell you what he thinks Dave did wrong in that accident or causing his injury or anything like that?

A. No.

Q. Did he ever suggest that he wants to try to make money out of this case in that conversation?

A. No.

Q. Or any other conversation did he ever suggest that?

A. No.

Q. Okay. Did he ever ask you for your insurance information?

A. I offered it to him.

Q. When?

A. Right after the accident happened.

Q. You mean while he was still on the way to the ER or that week later?

A. No. After the fact. Yeah. Maybe after a week. After a week later.

Q. I am trying to find out when.

A. A week later.

Q. When you went to his house?

A. Possibly. I gave him -- yes.

Q. Wait.

A. I can't remember.

Q. Hold on. We are talking about the times you spoke to Paul and there was only three times. It's got to be the first time, the second time or the third time that you offered your insurance information to him.

A. It must have been when I went over to the house then because I remember writing stuff down.

Q. The first time?

A. The first time.

Q. Okay. So during that hour conversation with Paul at his house, you said, here, I will give you my insurance information, right?

A. Right.

Q. Did he thank you for it?

A. I guess. Yeah.

Q. Was he polite?

A. He was polite, yes.

Q. Was he trying to make more out of the case than you thought?

A. No.

Q. Did Paul ever make you feel uncomfortable in the way he described his accident or what his injuries were?

MR. BARCH: I object. She said he didn't describe it to her.

BY MR. MAST:

Q. Well, in any way that he described his injuries or the accident did he ever make you feel uncomfortable like he was trying to make more out of it than he should?

A. No.

Q. Okay. So we talked about your first visit with him at his house for an hour. We talked two weeks later the telephone call for a few minutes and all he said was he is doing okay and that was about all that was discussed, right?

A. Right.

Q. No specifics regarding the accident?
A. Okay.
Q. Then the third and final conversation you had with Paul was in person, correct?
A. Yes.
Q. September, 2011?
A. Uh-huh.
Q. Yes?
A. Yes.
Q. And where was that?
A. At my house.
Q. So he came over to your house?
A. Yes.
Q. Was he alone?
A. Yes.
Q. Was anyone else other than you and him present?
A. Just me and him.
Q. Okay. And how long was that conversation?
A. Well, he wasn't there too long. He was taking a tiller off the back of his truck by himself that's two and a half feet off the ground.
Q. Off the back like a pickup truck?
A. Yeah. The vehicle that Mike came in here. I

don't know what you would call it. It's like a suburban and he had a flatbed on the back of it attached.

Q. He had a trailer on it?

A. Yes. A flatbed.

Q. And the tiller was it one of those garden tillers?

A. No. It was a big tiller.

Q. Well --

A. It's not a Mantis. A Mantis is a little tiny thing. This is a full size tiller, probably about this wide.

Q. Three feet wide?

A. Yes.

Q. Does it have wheels?

A. Wheels? You mean --

Q. Does it have wheels to roll it on?

A. Yeah. When you have to till, you got to have wheels. Okay. It got wheels on it. It's a tiller, yeah.

Q. All right. Do you know how much it weighs?

A. I asked him if he needed help.

Q. That's not what my question was.

A. No. I don't know. It probably weighed,

what, 200 pounds at least.

Q. Okay. Had you ever lifted it or moved it around yourself?

A. No.

Q. Who was going to use it?

A. Paul used it at his house to till his garden.

Q. Who was going to use it at your house?

A. He brought it back to my house so David could pick it up and bring it back to his house.

Q. So Dave was going to use it?

A. It was his.

Q. It was Dave's tiller?

A. It's Dave's tiller.

Q. So apparently Dave had let Paul use it before the accident, right?

A. No. It was after the accident. He had a big garden. It was time to till the garden --

Q. You are not letting me take you through this because I got to ask the question before you are answering me otherwise your answer doesn't mean anything.

A. I know. Okay.

Q. Do you know when Dave first lent this tiller to Paul?

A. Probably the beginning of September I'd say.

Q. Do you know that for sure?

A. I am only basing it on the fact that the garden was done and he wanted to till up his garden.

Q. Who is "he"?

A. Paul wanted to till up his garden and he asked David if he could use his big tiller.

Q. Do you know when Dave asked or when Paul asked Dave to use the big tiller?

A. Beginning of September maybe.

Q. Why? Were you there when Paul asked Dave that? How do you know that?

A. He brought the tiller back from his house the day --

Q. Paul did?

A. -- that David had borrowed him.

Q. I need names so I know who you are talking about.

A. David's tiller he borrowed to Paul to till up his garden.

Q. This is my question: Do you know when Paul borrowed the tiller?

A. In the beginning of September.

Q. How do you know that?

A. Because David said that Paul had the tiller.

Q. Okay. That's what I am trying to find out.

A. Okay. All right.

Q. So your -- the basis for what -- your thinking that Paul used the tiller beginning in September of 2011 was what Dave told you, right? You didn't have direct knowledge of that. You just knew it from Dave, right?

A. Right. I just knew that Paul had it. Right.

Q. Okay.

A. Yes.

MR. BARCH: Just, Carolyn, you don't have to feel bad if you don't know when he got it or how he got it. It's okay.

MR. MAST: It's not a big deal. I am just trying to find out.

THE WITNESS: Okay. So probably. Yeah.

MR. MAST: I am just trying to find information out.

BY MR. MAST:

Q. Okay. All right. So what you are saying is sometime in September Dave said Paul is borrowing my tiller, is that what you are saying?

A. Right.

Q. Okay. When Paul began to use it, you don't know, right?

A. No.

Q. You don't know who was using it over at Paul's house?

A. No.

Q. You never saw Paul use it, did you?

A. No. No.

Q. So who used the tiller over at Paul's house you don't know?

A. No, I don't.

Q. Okay. But Paul brought it back to your house to return to Dave, correct?

A. Yes.

Q. And that was in September, 2011?

A. Correct.

Q. Okay. And how long was Paul at your house that day?

A. I don't know. Not long. A few minutes maybe.

Q. What's that mean, a few minutes?

A. Okay. 15 minutes he was there.

Q. Was he inside your house or just outside?

A. He was outside.

Q. During the 15 minutes he was at your house, were you with him that entire time?

A. Yes.

Q. Was anybody with him at that time?

A. No.

Q. So just you and him again?

A. Right.

Q. Okay. And that visit was meant only for Paul to drop off the tiller?

A. Correct.

Q. Okay. Did you and Paul engage in any conversation about the chain saw accident, how it occurred or his injuries as a result of that?

A. No.

Q. Okay. So the only conversation that you had with him pertained to returning the tiller?

A. Yes.

Q. Okay. And what was said then regarding that issue?

A. I just said that tiller looks awfully big and it's pretty heavy. I says would you like me to help you take it down and my husband I believe was not home at the time so I was there and he says no. It's okay. I can do it.

Q. Okay. Were you there when he took it down?

A. Yes.

Q. Okay. How high was the trailer off the ground? About a foot and a half, foot maybe?

A. About two feet maybe.

Q. About two feet?

A. Yeah.

Q. Okay. And is there a ramp off of the trailer or does he have to roll it off or how does he get it off?

A. There was no ramp.

Q. Okay.

A. It was just the flatbed, you know.

Q. So how did he get it off then?

A. He picked it up.

Q. Okay. He picked the whole tiller up with both arms?

A. He picked it up, yeah. How else do you pick up 200 some --

Q. Listen, Carolyn, I am just trying to find out. I am not going to assume anything so don't get upset with this but I have to go through the steps of what happened, okay?

A. Uh-huh.

Q. You watched him pick up the tiller?
A. Uh-huh.
Q. Yes?
A. Yes.
Q. I need a yes or no, okay?
A. Yes.
Q. Did you watch him pick it up with both arms?
A. Yes.
Q. Okay. Did he wrap his arms around the engine and the wheels or just around the top handlebars?
A. Like that. Around the engine and the top so he could get it down.
Q. Okay. Was the engine of the tiller up by the edge, the rear edge of the trailer when he picked it up or was it in the middle of the trailer? Where was it?
A. It was towards the back.
Q. Did he pick it up from standing on the ground or from standing on the trailer?
A. I think he was on the ground and because it was towards the edge so he was on the ground where he could, you know, grab on to it.
Q. So as I understand from you, the tiller is at the end of or the back of the trailer which is an open

ended trailer, right?

A. Correct.

Q. Paul takes his arms and wraps it around from standing on the ground?

A. Right.

Q. Which is a foot or two feet lower than that?

A. Right.

Q. Correct?

A. Right.

Q. Wraps his arms around the engine and the wheels, that whole compartment, picks it --

MR. BARCH: I think she said he grabbed the handle and then the engine at the same time.

MR. MAST: Did he?

MR. BARCH: She reached like that.

THE WITNESS: He put his hand here and here so he'd have leverage to put the thing down on the ground.

BY MR. MAST:

Q. Here and here, I don't know what that means. Hold on. I need to follow this up with a question, okay?

Where was Paul's left hand or arm with regard to the tiller when he picked it up? Was it on

the engine part of it or was it on the handle or where?

A. I'd have to -- I don't know.

Q. Or don't you know?

A. I don't know. I know he had to use both hands to take it down.

Q. Okay. Where was his right arm when he picked up the tiller, on what part of the tiller?

A. Towards the heavier part.

Q. His right arm.

A. Where the engine is at, you know.

Q. Okay. You don't know where his left arm was but his right arm was by the heavier part of the engine?

A. Yes because, let's see, if I was standing in my driveway, yeah, and his back was that way, his right arm was here and the other arm would have been up.

Q. Up where, on what?

A. Well, towards the handle part of the tiller. It was like a bar.

Q. When you were looking at this, were you watching him do it?

A. Yes.

Q. What part of his body was facing you when he

was doing this?

A. His face was facing me. He was facing -- I was looking like I am looking at you.

Q. Right.

A. Okay. And --

Q. So let me stop you. So he had his pickup truck with him, right?

A. Uh-huh.

Q. Yes? I need a yes or a no.

A. Yes.

Q. The trailer was on the back of the pickup truck and he pulled into your driveway, right?

A. Right.

Q. And you are in the front of the house looking toward him, right?

A. Yes.

Q. So if he is at the back of the trailer, you are saying he'd be facing you, right?

A. Right.

Q. Okay. And then he'd have his left arm up somewhere maybe by the handles and his right arm surrounded the engine of the tiller, right?

A. Right.

Q. And then did he just pick it up?

A. Yeah. He picked it up and put it on the ground.

Q. Okay. How high off of the bottom of the open trailer did he pick the tiller up?

A. I am not quite sure.

Q. Okay. Then did he just shift himself around and let it straight down after he moved over from above the trailer?

A. No. He didn't -- He lifted it off and put it on the ground.

Q. That's what I am saying.

A. Yeah.

Q. When he lifted it up, did he back up ten feet? Did he just turn around and twist himself and drop it next to him? How did he drop it to the ground?

A. I don't remember the exact procedure.

Q. Okay. Okay. But after he picked it up and moved away from the trailer, he put it back on the ground then, right?

A. Right.

Q. Okay. And then what did he do with it?

A. And then we put it in the garage.

Q. "We put it," who put it?

A. I think he pushed it into the garage for me.

Q. On its wheels?

A. Yeah. On the wheels.

Q. Did it have rubber wheels, plastic wheels? What kind of wheels did it have?

A. It has rubber wheels on it I believe.

Q. And who has that tiller today?

A. David.

Q. Okay. Again, that visit in September, 2011 where Paul was dropping off the tiller never included any conversation about the chain saw accident or his injuries, correct?

A. No. No.

Q. Is that correct?

A. Yes. Uh-huh.

Q. So you have now told me everything, every communication and every visit that you have had with Paul since his accident, correct?

A. Right. Correct.

Q. At no time then did Paul ever describe for you how the specifics of the accident occurred; is that correct?

A. Correct.

Q. Okay. Okay. And how long have you known

Paul?

A. Ever since he was in high school.

Q. So for over ten years?

A. Ten years. Paul is 45 and I have known him ever since he was probably 18 or 17.

Q. So over 20 years then. Have you always known him to be a trustworthy, credible person?

A. Yeah. As far as I know, yes.

Q. Do you today -- And I know the lawsuit is here so I understand. That's fine. And you are kind of a defendant in the lawsuit so I get that but if you put the lawsuit aside, do you still consider him a friend or are you thinking of him in more negative terms now because of all of this?

A. Negative.

Q. Why do you think of him in negative terms other than the fact that you are named in a lawsuit? What's the reason?

A. Because, I mean, it happened as a bad accident of course and you know --

Q. Wait. It happened -- What?

A. It happened as a bad accident but when I heard from the ER on how the injuries went and then as time went on, many months went by, it wasn't until

December we knew that Paul had gotten your services that there was anything that would come to this recourse and he never said anything to me about the accident either thinking that his arm, you know, might just -- you know, thank God it was okay and then all of this came out, so.

Q. I mean, you are not a doctor and I am not a doctor --

A. No.

Q. -- and I guess we have to defer to what they think.

A. Uh-huh.

Q. What you are basically saying is you thought it was just a relatively small injury, right?

A. What about EKGs?

Q. Again, I am not going to get into the --

A. Medical. Forget that.

Q. -- into the medical. All I am asking you is -- My question is: Why are you now kind of feeling negative toward Paul today? What is the issue? Is it because you thought this wasn't much of an injury or you just don't think Dave did anything wrong or what? What is the reason?

A. Well, usually I have had those tests done.

Q. Listen, I don't want to get into all that.

A. It's because of the testing that he had done it proved that he didn't have any nerve damage done at one point and then along the way it all happened and then he --

Q. So your negative feelings toward Paul today is because you think that the medical treatment that he is getting isn't related to this accident but he thinks it is. Is that what you are saying?

A. I am saying that his EKG that he had done to prove nerve damage didn't show positive, so.

Q. That's up to his doctors to talk about.

A. Oh, I see. Okay.

Q. That's not him. He is not a doctor. He is not going to testify to his EKG. You know --

A. Okay. Fine.

Q. He doesn't know --

MR. BARCH: Carolyn, slow down. Answer the question. He wants to know why you view him negatively. Is it just because of the lawsuit and his claimed injuries or is there something more?

THE WITNESS: It's just the claim from the lawsuit.

BY MR. MAST:

Q. The injuries?

A. Yes.

Q. The injuries issue, right?

A. Right.

MR. MAST: Okay. I don't have any more.

MR. ACCARDO: I got nothing.

THE WITNESS: He probably had enough of me already probably. Good thing I ran out of water.

MR. BARCH: Hold on one second.

MR. MAST: How do you feel about me, negatively?

THE WITNESS: I don't feel negatively about any of you guys. I am just glad I am not a lawyer, I am not a doctor, I am not a police officer.

MR. BARCH: Let's not talk about things that are not associated with the deposition on the record at least.

THE WITNESS: Okay.

EXAMINATION

BY MR. BARCH:

Q. With respect to the tree branches, the size of the trees, the size of the branches that were being cut, those were all estimates that you gave, correct?

A. They were, yes.

Q. You didn't go out there and measure any of this stuff?

A. No.

Q. Okay. And with respect to David using the chain saw that day that Paul was injured or the day he cut the apple tree up or the day he cut up the branches from that larger tree, did you feel that you had any skill that you could give to him? Did you feel you could teach him anything about the use of chain saws because you had never used one?

A. No.

Q. Did you at any point see anything in connection with David's use of a chain saw that was a concern for you based upon what you did know, if anything, about using chain saws?

A. No.

Q. Was there anything about the way David was using a chain saw that you suspected was dangerous?

A. No.

Q. Did you feel like -- Knowing that Paul was out there that day, knowing that David was out there the day he, Paul, was hurt, did you believe there was any -- did you feel compelled to tell them that they could be hurt by a moving chain blade?

A. No.

Q. Did you think that -- did you believe that was something obvious?

A. Right.

MR. BARCH: That's all I have.

MR. MAST: Okay.

MR. BARCH: We are going to probably reserve signature on this one.

(FURTHER DEPONENT SAITH NOT.)

IN THE CIRCUIT COURT
FOR THE 22ND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG, Plaintiff, vs. DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE and CAROLINE McGUIRE and BILL McGUIRE, individually, Defendants.	)	No. 12 LA 178

I, CAROLYN McGUIRE, being first duly sworn, on oath say that I am the deponent in the aforesaid deposition taken on March 20, 2013; that I have read the foregoing transcript of my deposition, and affix my signature to same.

_____
CAROLYN McGUIRE

Subscribed and sworn to before me this day of , 2013

Notary Public

C E R T I F I C A T E

I, Paula Ann Erickson, Certified Professional Reporter, Registered Professional Reporter and Notary Public, do hereby certify:

That the witness in the foregoing deposition named was present at the time and place therein specified;

That the said proceeding was taken before me as a Notary Public at the same time and place and was taken down in shorthand writing by me;

That this transcript is a true and accurate transcript of my shorthand notes so taken, to the best of my ability.

I further certify that I am neither counsel for nor related to or employed by any of the parties to this action and that I am not a relative or employee of any counsel employed by the parties hereto or financially interested in the action.

Paula Ann Erickson
Certified Shorthand Reporter
Registered Professional Reporter
License No. 084-003899
Notary Public

Dated this 9th day

of April, 2013.

MEMORANDUM

TO: File

FROM: Hans

DATE: March 21, 2013

SUBJECT: **DISCOVERY DEPOSITION OF CAROLINE MCGUIRE**

CASE: PAUL DULBERG

On March 20, 2013, I took the discovery deposition of Caroline McGuire before court reporter, Paula Erickson at Urbanski Reporting 312/977-1777. The transcript was ordered by defense counsel, we ordered a copy.

Caroline McGuire is a real talkative person and has difficulty waiting for the questions to finish before she gives an answer. However, she is very pleasant and would probably come across credible. The following favorable and unfavorable testimony was given.

FAVORABLE TESTIMONY:

1. She has always known Paul to be credible, honest and has never heard anything from Paul's mouth that he was trying to get people to lie or to say things to allow him to make a recovery so that he will never have to work again.

2. Neither she nor her husband, William are able to use a chainsaw and therefore, they purchased the chainsaw that Dave was using at the time of Paul's accident earlier in the year for Dave to use to cut trees on their property.

UNFAVORABLE TESTIMONY:

1. Dave is experienced for many years using a chainsaw and she has always seen Dave use a chainsaw in a careful and proper manner.

2. She was never outside while Dave and Paul were on the day of the accident and therefore, she doesn't know who was doing what with regard to the cutting up of the branches behind their house. She delivered water to them once, but does not recall who was doing what or what type of work they were performing other than cutting up the branches. She thinks Dave was using the chainsaw.

Caroline McGuire is married to husband, William and they have been married for 20 years. She was previously married to Alan Gagnon, but he died 16 years ago, they were divorced before he died. William is now her son and two daughter's step-father. William is disabled but he use to work as

a carpenter before he retired. Caroline is retired too, but she use to work in a factor job before she retired. She is 66 years old.

About 4 years or so, Dave married his wife Pam and they moved up to Genoa City, WI to live. They have lived up there for the past 12 years. Dave is involved in autobody work at their house.

On the day of the accident, June 28, 2011, they had 2 evergreens in their backyard that they wanted cut down. Dave had some experience using a chainsaw, so they asked Dave to cut the limbs from the tree from the bottom up from about 15 to 20 feet. They were then going to hire a tree contractor to cut the tree trunks down later because they were so tall and large.

Before Paul's accident, Dave had been to their property to cut trees down on 3 separate occasions. One was in early May 2011, when they had a big tree in front of their property that was cut down by a tree service and then Dave and Paul used a chainsaw to cut up the sections that were left for Paul to use as firewood in his house. She was very complimentary of Paul, thought him to be a nice boy and they had known him for years and years and always thought him to be a credible, honest person.

Later, around June 2011, Dave was asked to cut an apple tree down in their backyard and he did that alone. The apple tree was about 20 feet tall, maybe 6-8 inches wide.

The third time Dave did tree work at their property was just prior to Paul's chainsaw accident on June 28, 2011. Dave started the work one day earlier by himself. He was cutting the bottom section of branches on two evergreens in their backyard. Paul came the next day to help Dave cut up the branches. She doesn't know what Paul was doing or who was doing what type of work, but she heard later that Paul was holding the branch and Dave cut him with the chainsaw. Dave had a different recollection. Dave told her that Paul was holding the branch and Paul moved his arm up from a different position and Dave did not know that and Dave cut him with the chainsaw.

At the time of Paul's accident on their property in June 2011, she was inside cleaning up and doing household chores while her husband, William was watching tv. She had only gone out twice that day. One to give water to Paul and Dave and the other time to play with Paul's dog in the backyard for a few minutes. She never saw the course of their work or what they were doing that day.

All of the sudden Paul rushed into the house with Dave and said that he was cut by the chainsaw. She wrapped his right arm with a towel and then Dave took Paul in Paul's truck to the hospital - NIMC. A couple hours later Paul and Dave returned and Paul said that he needed to get a prescription filled for pain medication. She offered Paul $50 to get the pain medication filled because he had no money.

The day of Paul's accident, she never spoke to Paul or Dave about the specifics of the accident. She thinks the next time she spoke to Dave a couple days later Dave spoke a little bit more specifically about what had happened and told her that Paul was holding a branch and was moving his arm up to reposition it and he did not know that and cut Paul's arm.

She saw Paul a few times after the accident maybe 3 times. The first time was within a week when she visited Paul's house to see how he was doing. He said that he was ok but it hurts. Two weeks later she called Paul on the phone and Paul said that he was doing ok. The last time she spoke to Paul after the accident was in September 2011 when Paul went to her house to drop off a tiller that

was owned by Dave. The tiller weighs about 200 lbs and she explained that Paul picked it up with his two arms from a trailer and put it on the ground and wheeled it into the garage all by himself. Without help.

S:\Main\DULBERG, PAUL\Memos\Memo re DEP of Caroline McGuire 3-21-13.wpd

ORIGINAL

Discovery Deposition of **DAVID GAGNON**

Date: February 4, 2013

Case: Dulberg v. Gagnon

Urbanski
Reporting Company

Phone: 312-977-1777

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND
JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 12 LA 178
	)	
DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE; and CAROLINE McGUIRE and BILL McGUIRE, Individually,	)	
	)	
Defendants.	)	

The deposition of DAVID A. GAGNON taken before Margaret Maggie Orton, Certified Shorthand Reporter and Registered Professional Reporter, taken pursuant to the provisions of the Illinois Code of Civil Procedure and the Rules of the Supreme Court thereof pertaining to the taking of depositions for the purpose of discovery at 3421 West Elm Street, McHenry, Illinois, commencing at 1:12 p.m. on February 4, 2013.

APPEARANCES:

LAW OFFICES OF THOMAS J. POPOVICH, P.C.
MR. HANS A. MAST
3416 West Elm Street
McHenry, Illinois 60050
Phone: (815) 344-3797
E-mail: hansmast@comcast.net

On behalf of the Plaintiff;

LAW OFFICES OF STEVEN A. LIHOSIT
MR. JOSEPH P. CALLAHAN
200 North LaSalle Street
Suite 2550
Chicago, Illinois 60601
Phone: (312) 558-9800
E-mail: jcabd@allstate.com

On behalf of the Defendant David Gagnon;

CICERO & FRANCE
MR. RONALD A. BARCH
6323 East Riverside Boulevard
Suite 2
Rockford, Illinois 61114
Phone: (815) 226-7700
E-mail: rb@cicerofrance.com

On behalf of the Defendants Carolyn McGuire and Bill McGuire.

* * * * * *

I N D E X

WITNESS	PAGE
DAVID A. GAGNON	
Examination by Mr. Mast	4
Examination by Mr. Barch	188
Examination by Mr. Callahan	201
Further Examination by Mr. Mast	202
Further Examination by Mr. Callahan	210
Further Examination by Mr. Mast	210

E X H I B I T S

GAGNON DEPOSITION EXHIBIT	PAGE
No. 1	143
No. 2	180
No. 3	183

(Witness sworn.)

MR. MAST: All right. This is the discovery deposition of David Gagnon taken pursuant to notice in accordance with the applicable rules.

WHEREUPON:

DAVID A. GAGNON,

called as a witness herein, having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MAST:

Q Mr. Gagnon, I'm Hans Mast. I represent Paul Dulberg. I'm going to ask you some questions regarding this chain saw incident. Start out with some background information. I just want to make sure -- And I imagine you've never given a deposition before; is that correct?

A I have on my own behalf. I was in a car accident several years back.

Q Okay. So you know the process?

A Fairly well, yeah.

Q Okay. So really the process is simple. Questions and then you answer the questions and we go back and forth until we're done, okay?

A Okay.

Q I want to make sure, though, that your answers are responsive to my questions. So if you don't understand the question, let me know. Otherwise if you answer it, we're all going to assume that you understood the question, okay?

A I understand.

Q Okay. Let's see what else. You're aware obviously of Paul's accident that this case is all about that happened, I think, at your parents' house during some chain saw work at their house? You're aware of that?

A Yes, I'm aware of that.

Q Okay. And I believe, and you can correct me if I'm wrong on anything obviously, but I believe it happened June 28th, 2011? Does that --

A Yes.

Q -- sound right?

A Yes, that sounds correct.

Q Okay. Do you remember what day of the week that was?

A No, I do not.

Q Was it Saturday or Sunday?

A No, it was not. It was during the week, I'm quite sure.

Q Okay. I'd like to start now and go through some background information. So why don't we start with this: What's your date of birth?

A 4-3-67.

Q And that makes you how old today?

A I am 45.

Q Are you employed today?

A I am self-employed as I have been my entire life.

Q What are you self-employed in doing?

A I do auto restorations and collision repair.

Q Do you do that under your own name?

A I do that under the name of Dave's Auto Body.

Q At home?

A Yes.

Q Is that an incorporation or some type of formal --

A No.

Q -- organization?

A No. No.

Q Okay. How long have you been doing auto restoration and collision repair under Dave's Auto Body, under that name?

A Probably 20 years.

Q Has it always been full-time?

A I would have liked it to have been. As work comes, I work on that; otherwise, I fill the void with other things that I can perform.

Q All right. Have you had to fill the void with other things in the last ten years?

A Yes, and I have been employed with other people in between.

Q Okay. So we'll get to that in a minute, then, okay?

A Okay.

Q What is your current address?

A 39010 90th Place, Genoa City, Wisconsin.

Q So that's right over the border here to the north?

A Yeah. 53128 is the zip.

Q Who do you live with there?

A My wife.

Q What's her name?

A Pamela.

Q Anybody else live at that address?

A No.

Q Do you have any children?

A No, I do not.

Q And your Social Security number?

A In full?

Q Yes.

MR. CALLAHAN: Can we do this off the record then?

MR. MAST: We can do it off the record.

BY MR. MAST:

Q Let's say on the record, what are the last four digits?

A 2535.

Q 2535?

A Yes.

MR. MAST: Okay. Give it to us off the record now.

(Discussion off the record.)

BY MR. MAST:

Q Did you give us your --

MR. CALLAHAN: Back on the record?

MR. MAST: Back on the record.

BY MR. MAST:

Q Did you give us your full Social Security number off the record?

A Yes.

Q Okay. All right. Do you have any criminal

convictions on your record in the last ten years?

A No.

Q How long have you known Paul Dulberg?

A 35 years.

Q And 35 years, how did you meet him? 35 years --

A Riding bicycles in a place we had deemed called the mini trails.

Q So were you neighbors, or ...

A We lived close by. He lives in Pistakee Terrace, my mother -- or my mother lives in Pistakee Terrace; he lives in Pistakee Highlands which is about, I would say, a quarter mile maybe away from one another.

Q And the mini trails were by your mother's house?

A They were closer to his home.

Q Closer?

A They were closer to his home. They were just down the road from his home.

Q Okay. And since you kind of met at the trails and you became -- a friendship arose?

A Yeah. Yes.

Q Okay. Has that friendship been in pretty

good standing since then till today?

A Yes, and as of right now I don't know where it stands. I have not spoken with him as I was directed not to.

Q Fair enough. But at least in your mind is it still in good standing -- Hold on. Let me just finish the questions. Is your friend- -- At least in your mind, is your friendship still in good standing with Paul Dulberg today?

A No.

Q Okay. And is that because of the suit?

A Yes.

Q Okay. Fair enough. Understood about that.

Until the suit was filed, okay, was your friendship with Paul Dulberg in good standing?

A Yes.

Q Had it been all the way for those 35 years until the suit was filed?

A Yes.

Q Okay. So there was never any times where your friendship was seriously tested over that 35 years?

A No.

Q Is that correct?

A That's correct.

Q Okay. And you can correct me if I say something that's not accurate, but so is it my feeling, even though you don't know what Paul's view of your friendship is, this suit being filed against you has brought negative feelings in your mind about your friendship?

A Yes, and only recently, if I may.

Q Okay. Go ahead.

A At first when it had arisen, this situation, we were still talking to one another and I was freely submitting both insurance information, whatever he requested because, you know, there wasn't a problem at that time. But things turned as Paul had said some things that didn't really go well with me.

Q You mean in his deposition or somewhere else?

A Personally to me.

Q Well, if -- I guess I've got to ask you what those things were then.

A Okay. After bringing him to the hospital after this occurrence took place with his vehicle, we had left. Myself still being very (inaudible) and my heart being concerned as to his condition because he's my friend, he turned to me just leaving the hospital

and said that we can make a lot of money at this.

Q Okay. Was anybody else present during that conversation?

A No. No.

Q Was that in your car on the way from the hospital?

A That was in his vehicle immediately leaving the hospital and still in the parking lot at the hospital.

Q Was that the same day of your accident -- of his accident?

A Yes.

Q Okay. So that would have been June 28, 2011, he was discharged out of the hospital and he was in his car?

A Passenger's seat; I was driving, yeah.

Q Okay. Did you not have a car at the time or something?

A No. His vehicle was at my house -- my mother's house, I should say, where the occurrence happened; and when we left, he said, Just take my car, so we took his vehicle to the --

Q All right. Let me stop you because I understand what you're saying. You're saying after

his injury you drove his car with him as a passenger to the hospital?

A Yes.

Q He got treated, discharged, and then you were back in his car going back to your mom's house?

A Never left the parking lot and he said that.

Q No, I understand that --

A Yes, but that's --

Q -- but that's where you were going?

A Yes. Yes.

Q All right. Let's try not to -- I'll try and won't talk over you; you try not to talk over me.

All right. So you're leaving the hospital still in his car on the way to your mother's house, right? Right? That's on the way? That's where you were going?

A Right, that's where we were going, but we still had not left the parking lot.

Q All right. I didn't say anything about where you were. I'm saying you're in the car on the way to your mother's house, right?

A Yes.

Q Okay.

A Yes.

Q But before you left the parking lot, you're in the car in the parking lot of the hospital and that's when he made that statement?

A Yes.

Q Did he say anything else during that conversation that you -- that you didn't like?

A No.

Q Okay. So that was the extent of anything that he said about financial aspects of this case?

A Yes.

Q Is that the only time he said anything about financial aspects of this case?

A No.

Q When is the next time he said anything like that?

A I had visited him shortly after because we were still in friendship, and I stopped in his home, and ...

Q How soon after the accident?

A Oh, this is about three or four months after the accident.

Q Okay.

A It was -- Now, I remember it was cold. It was winter so I can't say exactly what day, but I was

leaving and he had mentioned that, This may possibly be the best thing that could happen to me because I won't have to work the rest of my life.

Q Any witness to that conversation?

A Yes, Michael Mcartor.

Q Who?

A Michael Mcartor, who lives with him.

Q How do you spell the last name?

A Capital M small C, Artor, A R T O R or E R; I'm not quite certain of that spelling, but he resides with Paul there at his home.

Q Where Paul's living now?

A Yes.

Q Okay. And where did that conversation take place four months after the accident?

A In his kitchen where -- In his kitchen.

Q And the extent of this conversation regarding the financial aspects that we're talking about is that he said, This might be the best thing that happened to me, and what else? Was there anything else?

A Because I may not have to work another day of my life.

Q Because I what?

A May not have to work another day of my life.

Q Did he say anything else during that conversation now about the financial aspects of this accident?

A No.

Q Did he say anything else during that conversation that you found uncomfortable or wrong?

A No. No.

Q Okay. Any other things that Paul has said that you believed were wrong or had some kind of financial component to this accident other than those two that we've -- you've already described?

A There was also another instance where he visited me at my home, I believe it was in 2012 when things were going along here; we were still in conversation with one another.

Q Okay. Let me just stop you. After the suit was filed or before the suit was filed?

A It was after the suit was filed, yeah.

Q Okay.

A And he was not -- if not coaching me, reassuring me that if I did make it easier, shall we say, or ... that I would be awarded something for my cooperation in it.

Q Was there any witnesses to that

communication?

A No. No.

Q Did he say how you would be awarded?

A No.

Q Did he promise to pay you anything in exchange for your testimony?

A Yes.

Q What did he promise to pay you?

A $10,000.

Q What did he say?

A If he got a hundred thousand dollars.

Q What was the -- I need to know the exact wording of that communication so that we all can understand what he said.

A If this goes well for me, I wouldn't have a problem with giving you $10,000 if say I was to get a hundred thousand dollars.

Q Okay. Did he, though, make that hundred -- that $10,000 conditional on what you would say or just said, If it goes well for me, I'll give you 10,000 out of the hundred thousand?

A He didn't place conditions on it.

Q Okay.

A I was assuming.

Q Okay. Fair enough. That's very honest of you. I appreciate that. This is my question then -- Well, let me go further. Did he say anything else during that conversation in 2012 about anything you felt was inappropriate or uncomfortable for you or related to financial interests that he was --

A No.

Q -- talking about?

A No, he did not.

Q Okay. Any other conversations with Paul now? We've talked three different incidents now so I want to make sure I've talked about everything. Is there any other conversation you've had with Paul or contact with Paul regarding any uncomfortable or uneasy conversations or things he said relating to either financial interests or some other component of the suit or claim?

A There was one time where he came up and he was asking for information, which I gave him, my insurance.

Q When was this? Just give me a date so I know how to ...

A I cannot supply you with a date. I could say that it was before that last incident that I just

spoke of of the hundred thousand and $10,000 offering there.

Q Was it after suit was filed or before suit --

A It was after the suit was filed.

Q Okay.

A And he showed up at my residence with an iPad, which he's into techy things, things like that, and I wasn't aware that there was a camera on front and back but I was aware that there was a camera that was on and he was showing me what was being viewed on the screen, and then we proceeded into our house and it was on again. He was showing me how you can look at the front and the rear screen and me not being of much interest of this device, I just told him, Could you shut that thing off. I felt as though I was being inventoried.

Q Okay.

A So that would be the only other issue.

Q Okay. Fair enough.

A Yeah.

Q I appreciate that. Did he say or do anything that you felt was wrong or inappropriate regarding the case in and of itself?

A No.

Q Okay. Nothing about financial interest --

A Not that time, no, nothing.

Q Okay. Do me a favor, and you're doing very good so far, but you were just kind of cutting me off the last --

A I'm sorry.

Q -- part of my sentence and I want to make sure you understand the full thing I'm going to say, okay? So let's try not to cut each other off.

All right. So at least, and you can correct me if I'm wrong, as I understand it, there are just three conversations where Paul made any statements that felt -- that made you feel uncomfortable pertaining to financial parts of the lawsuit?

A Yes.

Q Okay. Or the claim; fair enough?

A Yes. Yes.

Q And that was the day of the accident where he made that one-sentence statement, correct?

A Mm-hmm.

Q Yes?

A Yes. Yes.

Q And that was four months later where he made

that statement about, This could be the best thing that could happen to me because I might not have to work the rest of my life?

A Yeah.

Q Yes?

A Yes.

Q And then there was the last thing that was in 2012 after suit was filed where he said -- although he didn't condition it, he said, Hey, if I get a hundred thousand, I'll give you $10,000 of that?

A Yes.

Q Right?

A Yes.

Q Okay. And would it be fair to say, including that last 2012 conversation, he never said, If you do this for me, I'll do this for you; fair enough?

A Yes.

Q Is that true?

A That's true.

Q Okay. So he never -- You could make the assumptions you want, and you're free to do that, okay, but my question is nothing he ever said pertained to having him wanting you to lie for him?

MR. BARCH: I'm going to object. It's

argumentative, but go ahead.

MR. MAST: Go ahead.

MR. CALLAHAN: I'll join that objection.

BY THE WITNESS:

A No, he was blatantly asking me in regards to what he was asking me to do to make it easier for him.

Q Right.

A And making it easier for him would not just be submitting the truth in my judgment, but it would be submitting to what he would want me to say so that it would be easier for him.

Q I understand what your judgment is.

A Yes.

Q This is what I'm questioning, though. My question is what he said to you, okay. You can take any assumptions you want from what he said to you; you're free to do that, okay. My question, though, is did he ever tell you that he wanted you to lie for him?

A He did not say he wanted me to lie for him, no.

Q Okay. You took that from an inference of what else he said that you've already told me, right?

A Yes.

Q Those were inferences you made from what he told you, correct?

A Yes.

Q Okay. Did you ever say, Hey, do you want me to lie for you -- Well, let me put it this way. I'm going to try to just summarize it.

Is it fair to say he never asked you to lie for him?

A That is correct.

Q Okay. Is it fair to say he never agreed to give you money in exchange for what you would say to him -- say for him?

A There is one more thing that I said that I'm recollecting now.

Q Okay.

A And I said, Well, what would you want me to say, that I was freewheeling a chain saw and I was negligent?

And he said, That sure would make things easy.

Q Okay. And when did he say that, which conversation?

A That same conversation when he spoke of the hundred thousand dollars and the $10,000.

Q So that's the 2012 conversation?

A Yes. Yes.

Q Okay. And what -- So let me get it clear now. The 2012 conversation that we've already talked about was after suit was filed?

A Yeah.

Q It says, If you would -- What you're saying he said is if he would be awarded something, say a hundred thousand dollars, he would give you $10,000 of it, right?

A Yes.

Q And now you're adding on to what else did he say?

A He -- I said to him, Well, what would you expect from me? What would you want me to say, I was freewheeling a chain saw and I was negligent? I said I would not do that. I'm going to tell the truth. And that's basically where our friendship -- I haven't spoke to him really very much or been with him or conversed with him since then.

Q All right. You're going a little further than what I'm asking, though, but that's fine. My question was, what more did he say and you told me what you said, all right, so let's just go straight

with what I'm asking. I'm asking other than, Hey, if I get a hundred thousand dollars, I'd be glad to give you $10,000 of that, other than Paul saying that, what else do you recall Paul saying in that 2012 conversation at your house?

A Nothing.

Q Oh, okay. It was just what you said then?

A That's what I said after. I sufficed by way of example, Is this what you would want?

And he said, That sure would make it easy.

Q Well, then that is something that he said. Listen, this is what I'm trying to get at, I'm trying to find out what he said, okay?

A Okay. He said nothing in response to that except he said, That sure would make it easy.

Q All right. You're interrupting me again. Let's go back at it again.

A Okay.

Q I want to go step by step because I want to try to find out everything you're going to say. I don't want there to be any stones unturned, okay?

A Yeah.

Q You told me that in that 2012 conversation he

said, If I get a hundred thousand dollars, I'd be happy to give you $10,000 of that. Is that what he said?

A Correct, that is what he said.

Q Okay. In response to that, what did you say?

A I said, What would you want me to say, I was freewheeling a chain saw and I was negligent? I said, I will not do that.

Q Okay. All right. Stop. That's what you said, okay. And then what did he say in response --

A Nothing.

Q -- to that?

Okay. Nothing, right?

A Nothing.

Q Okay. Because I thought you said that he said, Well, that would make it easier.

A Correct. I'm sorry. That was his closing statement after I said that.

Q So he did say something?

A Yes, he did. I'm sorry.

Q Okay. So let's go through it again now.

A All right.

Q Because I want to make the chronology, I want to make that correct, okay?

A Okay.

Q In the 2012 conversation at your house you said that Paul made a statement that, If I get a hundred thousand dollars of this, I'll give you -- I'll be happy to give you $10,000 of this -- of that. Is that what he said?

A Correct.

Q Okay. In response to that you said, What do you want me to say, that I was freewheeling and negligent? I will not do that. Was that your statement?

A That was my --

MR. CALLAHAN: I thought he said freewheeling a chain saw and that I was negligent.

BY MR. MAST:

Q Okay. Is that what you said?

A Yes.

Q Okay. And then in response to that, what did he say?

A He said, That would make it easy.

Q Okay. Did he say that's what he wants you to say or did he just say those words?

A He just said those words.

Q Okay. Is that all he ever said then after

that conversation at the end of that conversation?

A Yes.

Q All he said was, That would make it easy?

A Yes.

Q Okay. All right. So we've got three conversations, one on the day of the accident where he said, We can make a lot of money at this, right?

A Correct.

Q That's all he said during that conversation that was uneasy or uncomfortable or financially motivated, correct?

A Yes.

Q Okay. Second conversation four months later, you visited him at his house, right?

A Yes.

Q And he said, This may be the best thing that happened to me; I might not have to work the rest of my life?

A Yes.

Q Is that all that he said that was uneasy or uncomfortable or related financially to this case?

A Yes.

Q And the third thing was 2012 where he said if he gets a hundred, he'd give you ten and then you

said, Well, what, if I say that -- What do you want me to say, if I'm wheeling it, the chain saw, and negligent?

And he said, Well, that would make it easy.

Is that everything out of that conversation that was uneasy, uncomfortable or financially related?

A That is all, yes.

Q Okay. Have you now --

MR. CALLAHAN: Can I object? I think he did leave off that one comment, I'm sorry, the one he said, I won't do that.

BY MR. MAST:

Q Okay. Yes, and you also said you wouldn't do that after you --

A I said that I would not do that, yes.

Q After your con- -- After your response to what he said, you said, I would not do that?

A Yes.

Q Okay. Have we now covered everything that you and Paul talked about after the accident that made you feel uncomfortable, uneasy or financially related to this accident?

A Yes, that would be all.

Q Okay. Very good. That wasn't too hard.

A No.

Q Oh, one final question on those things.

A Okay.

Q Were there any witnesses to either of those three conversations other than you said the --

A Michael Mcartor.

Q Michael Mcartor was a witness to the second one four months after the accident?

A Yes, which was at Paul's home in his kitchen, yes.

Q Right. Any other witnesses to any other parts of those communications?

A No.

Q Just you and Paul and then the second conversation was with Michael?

A Correct.

Q Okay. Are you friends with Michael? Have you ever been friends with Michael?

A I've been friends with Michael probably about 25 years.

Q Are you still friends with Michael?

A As far as I know, yes.

Q Okay.

A This is not related to him.

Q So the reason you're not friends with Paul anymore is after the third conversation in 2012 where you said, I would not do that, and he said, That would make it easy, you haven't spoken to him since; but in your mind it's not friendly because of what you thought he was asking you to do?

A Yes.

Q Fair enough?

A Yes.

Q Do you know in his mind if he thinks you're still friends?

A I do not know.

MR. CALLAHAN: I'd just object as to relevancy and as to speculation.

BY THE WITNESS:

A I don't know.

MR. BARCH: Join the objections.

BY THE WITNESS:

A I haven't spoken to him. I don't --

Q Hold on. Just let them give the -- All right. They objected.

MR. CALLAHAN: You may answer.

BY MR. MAST:

Q What's your answer to that question? Do you know in Paul's mind whether he thinks you guys are still friends or not?

A I do not know. I have not conversed with him in quite a while now.

Q All right. And then that fourth thing that you talked about didn't really have to do with any statements but he had an iPad and it looked like he was videoing or something. He didn't do anything wrong during that; you just weren't sure what he was up to, right?

A Right.

Q Okay. That didn't have anything to do with any statements or anything; fair enough?

A Fair.

Q Okay. So we've covered all the statements that Paul made that made you feel uncomfortable?

A Yes.

Q Okay. All right. How long have you been married?

A I've been married since 2008, August 16th.

Q Okay. Does your wife Pamela know Paul?

A Yes.

Q On a -- like a friendly basis or just sees him every now and then? I mean, how would you describe her knowledge of Paul, just passing?

A He's my friend and is friends with him is the same; there was never anything between us until ...

Q I mean, did she spend as much time with Paul --

A No.

Q -- as you did?

A No.

Q Okay. Her contact with Paul was just passing then? It wasn't where she would do anything with him?

A Correct.

Q Is that fair enough?

A Yeah, correct.

Q Okay. And she doesn't have any knowledge regarding any communications Paul made regarding the incident that were uncomfortable or financially motivated?

A No.

Q Is that fair?

A That's fair.

Q Okay. Okay. What's the highest level of education you have?

A I was accepted at DeKalb University. I didn't pursue it until its end, and then I went to College of Lake County.

Q You mean Northern Illinois Medical Center -- Northern Illinois University?

A Yeah, DeKalb College.

Q Okay. All right. I know, I'm just trying to connect the dots here.

You were accepted at Northern but you never went there?

A Oh, no, I went there and I just -- because of turns of events in my life, personal, I did not finish, and --

Q All right. But I'm not getting to that point. I'm just --

A Okay.

Q The question was, where did you go to -- the highest level of education, that's the question.

A I was accepted at Northern Illinois University.

Q You weren't just accepted. You went there, right?

A Yes.

Q Okay. How long did you go to Northern

Illinois University?

A Two months.

Q Okay. And what program were you there, just general?

A Program?

Q What type of degree? What program?

A Oh, engineering.

Q Okay.

A Mechanical engineering.

Q Okay. And what year was that, approximately?

A That was 1985.

Q Instead of going to DeKalb or at least after two months of going to DeKalb, where did you go after that?

A I pursued employment as an auto body worker.

Q With who?

A It was called Lakeland Autobody. It was in Volo, Illinois.

Q Are they still together?

A No.

Q How long did you work there?

A Three years.

Q Doing auto body work?

A Correct.

Q Who was your supervisor?

A Owner and supervisor Brian Schuman (phonetic).

Q Brian what?

A Schuman.

Q Schuman?

A Yeah, Schuman.

Q So after two months of DeKalb, you went to Lakeland Auto?

A Mm-hmm.

Q Right?

A Yes, correct.

Q Okay. When did you go to -- You said you went to another college?

A CLC, College of Lake County.

Q When was that?

A I believe that was 1987.

Q Sometime while you were at Lakeland?

A Yeah, I was -- Yes, I was working at the auto body.

Q And how long were you at CLC?

A I want to say six months.

Q Okay. On what program?

A Same, mechanical engineering.

Q Did you finish that program?

A No, I did not.

Q Why not?

A Because I needed to earn money, and I wasn't earning enough doing -- going to school and working.

Q Okay.

A Pretty physical job, auto body.

Q Okay. Any other college education after high school?

A Completed, no.

Q Not -- I didn't say completed, any other college education after high school? Did you go to any other colleges?

A None other than the ones I had mentioned.

Q That's what I'm asking you.

A Okay.

Q You went to NIU and CLC. Any other college?

A No.

Q Okay. Where did you graduate high school?

A Johnsburg.

Q What year?

A 1985.

Q Okay. After Lakeland Auto, which I'm assuming was somewhere around -- when you finished

somewhere around 1988, '89, somewhere around there?

A Finished ...

Q When you finished Lakeland Auto, I'm assuming that was somewhere around '88 or '89?

A Yes. Yes.

Q Okay. Where did you go after that?

A I became self-employed performing the same.

Q To the present date?

A Yeah.

Q Okay.

A Yes.

Q Okay. Have you worked for anybody else during 1989 until now other than yourself?

A Yes.

Q How many jobs are we talking, lots?

A One at a machine shop, Swiss Automation in South Barrington, that was between 1999 and 2001, and then just currently last winter working at a place called Advantage Auto Body for three months. They let me go.

Q Where was that?

A That -- I'm not sure what town it is. It's in Wisconsin and about two miles from my home between Powers Lake and Burlington.

Q Okay.

A I'm not sure what town it resides in.

Q And when did they let you go?

A They let me go just at Christmastime last year.

Q 2012 Christmas?

A Yes.

Q All right. Any other employment since high school we have not discussed?

A No.

Q Okay. Do you have any training other than being self-trained on working with a chain saw?

A No.

Q So you're -- Well, let me ask you this way: How long have -- Well, strike that.

How long have you -- Strike that.

When's the first time you operated a chain saw yourself?

A Age 18.

Q Okay. About '85? No, wait. Is that '85?

MR. CALLAHAN: Yeah.

BY THE WITNESS:

A Yeah.

Q Yeah. About 1985 then?

A Mm-hmm.

Q Yes?

A Yes.

Q Yes. Okay.

Whose chain saw was that that you operated first?

A I do not recollect. We were camping, and I picked up a chain saw and was cutting firewood for the group that was there.

Q Okay. Was Paul with you at the time?

A No.

Q Okay. Have you ever owned a chain saw?

A Yes.

Q Okay. Do you own one now?

A No.

Q Okay. During what period of time did you own a chain saw?

A Oh, 2000 till 2004.

Q And for what reason did you own it and then no longer own it during those four years?

A A friend had garbage-picked it. It was an old really big chain saw that I rebuilt. I used it several times and then I sold it at a garage sale along with another unit that was just like it.

Someone wanted to fix up theirs too, so ... It was an old David Bradley chain saw; it was a very old model.

Q Wait, I missed some of that. You said you had one that you got from a friend from a garage sale but another, what was the other one?

MR. CALLAHAN: No.

MR. MAST: Sorry.

BY THE WITNESS:

A No, I had -- I had one that I operated and then I picked one up at a garage sale.

Q So you had two of them?

A Yeah, I had two of them, and I sold them both at the same time, yeah. One worked and one didn't.

Q And that was from 2000 to 2004?

A Correct.

Q Okay. During 2000-2004, did you use those chain saws on any type of continual basis?

A No.

Q They were just there for -- because you had fixed them up and you just kind of liked to have them around?

A No, they were very useful because they were large and I used them on my property to trim off a large maple branch that had fallen.

Q Oh, so you used them?

A I used the one that was working. The other one was not operational.

Q The one that was working that you owned from 2000-2004, the one chain saw that was working, you used only for your own personal use on your personal property?

A Yes.

Q Had you used a chain saw from 1985 until 2000?

A Yes.

Q Whose chain saws?

A Once again, I'm a camper and there would be a time when I would just elect myself to cut the wood, I just ...

Q Let me ask it this way, maybe it will be easier, because I know these aren't all easy questions. Before 2000, okay, when you first got your own chain saw, how many times would you have operated a chain saw over the 15 years?

A At least a dozen times.

Q Were they all during camping trips?

A Yes.

Q Okay. And they were all somebody else's

chain saw they brought to the camping site and you used them to cut up for camping wood?

A Yes.

Q Okay. And then beginning of 2000 you would use them a little bit more frequently because it was yours and you were using it on your property?

A Yes.

Q Okay. Do you have some type of forest or something on your property that you use it for, or ...

A No, I have negligent neighbors that when trees fall, they don't --

Q Okay.

A -- they don't really seem to attend to them, so I opted to do the clearing myself.

Q Okay. So you clear up a tree here and there?

A Yeah. Yes.

Q And I know there's no way -- easy way to do this, but I still have to ask the question. From 2000 to 2004 what would you estimate the number of times you used a chain saw?

A Three times.

Q All right. So up until 2004 the total times you used a chain saw was about 15 times?

A Correct.

Q Okay. All right. From 2004 until this accident in June of 2011, how many times did you use a chain saw?

A Four times.

Q And whose chain saw was it?

A The first time was a friend's, on his property; second time, again, camping; third time on my property, and the fourth and final time was at my mother's place.

Q Now, when you say your property, whose chain saw was it?

A That would be my friend Mike.

Q The first -- The first -- Well, okay. That would be the same friend that you operated the chain saw on his property the first time that you were spelling these out?

A After the 2004, yes. Yes.

Q Yeah. So beginning in 2004 when you no longer owned a chain saw, the first time you used it after that was with a friend at his house?

A Yes.

Q And that's Mike's?

A Yeah. Not Mike Mcartor.

Q No, I --

A Okay. I'm just clarifying.

Q That's fine. Okay. Second time was out camping cutting up firewood?

A Correct.

Q Third time was at your house with Mike's chain saw?

A Yes.

Q And fourth time was at your parents' house?

A Yes.

Q Okay. And was that fourth time at your parents' house the day of this incident or before the day of this incident?

A It was the day of that incident.

Q Okay. So if I were to -- and I know this isn't the easiest thing to do, but if the day of the incident was June 28, 2011, when was the last time you used a chain saw before that date?

A Oh. Datewise?

Q Some estimate, yeah. Within a month, a year, three years?

A It was a year.

Q Within a year?

A Yeah, within a year.

Q So it would have been the prior summer maybe?

A Yes.

Q Okay.

A Yeah, a storm took down some branches in my yard.

Q So that third incident after 2004, which you spelled out four times you used a chain saw, that third incident where it was Mike's chain saw on your property was the one in 2010 during the summer?

A Yes.

Q Okay. And then the next time you used a chain saw was on your parents' property on the day of Paul's accident with your parents' chain saw?

A Yes.

Q Okay. Did your parents ever attempt to educate you or train you on how to operate a chain saw at any time in your life?

A No.

Q Up till today?

A No.

Q Okay.

MR. CALLAHAN: Excuse me. You say -- Just to be clear, his parents, do you mean Mr. McGuire and Mrs. McGuire or his father and Mrs. McGuire?

MR. MAST: Okay. So those are two different

answers, I take it?

MR. CALLAHAN: Yes.

MR. MAST: All right. So we'll go through that. We will go through that.

BY MR. MAST:

Q Well, any -- All right. Whether it's stepparents or real biological parents, we'll just put them all in one group, okay.

Whether it's your stepparents or real biological parents, have your parents, meaning either/or, ever attempted to train you or direct you in the proper method or way to operate a chain saw your entire life until today?

A No.

Q Okay. Might as well go through your parents then. Bill and Carolyn McGuire, are they your parents?

A My mother is my biological mother, Carolyn McGuire. William McGuire is not my biological father.

Q Okay. So William McGuire is your stepfather?

A Correct.

Q Is your father -- your natural father living?

A No.

Q Okay. When did he pass?

A 1996.

Q Okay. I'm assuming he had never did anything with you with regard to chain saws; is that fair to say?

A We never interacted in that way.

Q Okay. Did either William or Carolyn McGuire ever interact with you with regard to how to use the chain saw?

A No.

Q Okay. Are your -- So when I say parents, since your father passed and Carolyn is your natural, I'll just talk about Carolyn and William as your parents, then, okay? Is that fair to you?

A That would be fair to me.

Q Okay. Have your parents -- What was I going to ask you? Oh, what do your parents do presently for a living?

A They're currently both retired.

Q Okay. Do you know how long they'd been retired?

A My mother, I believe, two years now. She was employed at Intermatic --

Q Okay.

A -- in Spring Grove, and William McGuire

worked for last Tempest Construction, and he was an industrial commercial drywaller.

Q Okay. To your knowledge -- and, again, we'll probably end up deposing them soon so we'll ask them, but to your knowledge do either of your parents have any expertise or experience in operating chain saws except just, you know, doing it on their own and around the house?

A They never have operated. They bought that tool specifically for that -- the cutting of the trees that needed to be done on their property.

Q And they weren't going to use it then? They were letting --

A No.

Q -- you do it?

A Right.

Q Okay. So they -- The chain saw that you were operating at the time of Paul's accident on their property, your parents' property, that chain saw was purchased by your parents for that particular project?

A I wouldn't say they bought it and then do this, they bought the chain saw because they had known that there would be -- need to be work done --

Q Okay.

A -- and I later was elected to do that.

Q So when they purchased the chain saw -- and, again, I'll ask them these questions, but I'm wondering what your knowledge is, when they purchased this chain saw, your parents, did they purchase it knowing that you were going to use it or just that somebody else and not them were going to use it?

MR. BARCH: Speculation, but go ahead, objection.

BY THE WITNESS:

A I can answer that when they purchased it that they didn't solely purchase it with intent for me to use it.

Q Wait. I missed the beginning of that.

A When they purchased that, they did not solely purchase it for my usage.

Q Okay.

A They had purchased it for trimming of trees on their property --

Q Right.

A -- and then when I was elected or became the person who did the work, I used that chain saw.

Q I understand that. My question has one little branch more to it. My question was, did they purchase it thinking somebody else other than

themselves were going to operate that chain saw?

A You would have to ask them that question.

Q So you don't know?

A I do not know.

Q Okay. Fair enough. Had you known either of your parents ever to operate a chain saw before Paul's accident?

A Neither one of them have ever operated a chain saw.

Q You know that?

A I know that.

Q Okay. What kind of -- Are they still living in the same house they were living at the time of the accident?

A Yes.

Q Okay. What kind of property is that if you describe it? Is it like a small little half-acre property, or is it a larger --

A It's a small one, third-acre residential -- what is it called? -- ranch.

Q Okay.

A Ranch home, full basement.

Q How many trees would you say are on their physical third-acre of property, if you had to give me

an estimate?

A I'm going to tell you.

Q Okay.

A Currently?

Q Yes.

A Ten.

Q Okay. Prior to the day of Paul's accident, how many trees were on that property?

A 12. Oh, 13.

Q So on the day of Paul's accident, did you take all three of those down then?

A I didn't take any trees down that day --

Q Okay.

A -- or during this occurrence.

Q Okay. I see. Just limbs?

A Yes.

Q Okay. We're going to get to that as we go here. Okay.

So even at the time Paul was injured, there were still 13 trees on the property?

A Yes.

Q But there were less limbs on the property, I take it then --

A Yes.

Q -- at the time of Paul's accident?

A Yes.

Q All right. Who took down those three trees on your parents' property after Paul's accident?

MR. BARCH: I'm going to object to the relevance, but go ahead.

BY THE WITNESS:

A Please reask the question.

Q All right. You said there were -- You said there are ten trees now on your parents' property?

A Yes.

Q And you said at the time of Paul's accident there were 13 trees on the property?

A Yes.

Q So I'm assuming three trees were taken down; is that right?

A Yes. Two were only related to that occurrence, though, and they were pine trees. The other tree that I'm saying is gone was an apple tree that was removed later by, I think, Bill. It was just a small little apple tree that was --

Q All right. Hold on. You're going way too far with my question.

A Okay.

Q My question is --

A Sorry for being all-inclusive.

Q It's okay.

A I know. I'm just apologizing.

Q No, you don't have to apologize, and let me just give you kind of an idea. You're being helpful and open, and I appreciate that. The thing is, though, I'm still going to have to go through those questions again as I go through this so it's not going to cut down the time. So I'm just trying to tell you.

A I'm in no hurry.

Q Okay. The three trees that were taken down since Paul's accident -- we'll get to when and all, who and all that -- who took those three trees down?

A I don't know.

Q Okay. Okay. Before the day of Paul's accident, so before June 28, 2011, had you known Paul ever to operate a chain saw?

A Yes.

Q Okay. How frequently?

A I don't know.

Q How did you know then if he operated a chain saw?

A I've seen him operating a chain saw.

Q Where?

A Camping, on his property, cutting telephone poles that he got for free to make use out of them.

Q Okay. Had you known him to operate a chain saw before the day of his accident in a fairly reasonable manner?

A Yes.

Q He wasn't, like, dangerous swinging it around or anything like that?

A No.

Q Okay. So he would operate it, would you say, in a safe manner before the day of the accident?

MR. BARCH: I'm going to object to --

BY THE WITNESS:

A I'm not qualified --

MR. BARCH: Let me object to the foundation.

But go ahead and answer.

BY THE WITNESS:

A I'm not really qualified to determine what safe is, I mean ...

Q Everyone has their own definition. I'm just asking you under your own belief of what safe is --

A Yes.

Q Let me finish the question. Under your own

belief of what safe is, do you believe Paul operated before the day of his accident, whatever times you saw him, the chain saw in a safe manner?

A Yes.

Q Okay. Had Paul ever seen you operate a chain saw before the day of his accident?

A Yes.

Q Where was that?

A Multiple times camping and also on my mother's property.

Q Well, let's go back then because when I asked you how many times you operated the chain saw after 2004, you only described one time on your mother's property and that was on the day of the accident.

A Does operating -- to clarify it -- include starting or actually cutting wood? Because there's --

Q Fair question but you didn't -- you didn't condition it when I asked you that before so that's why I'm going back.

A Okay.

Q We can -- I'm glad to define it any way you want. I'm just -- You didn't clarify it before so that's why I'm going back.

A Okay.

Q I asked you just recently, just the past question, how many times had Paul -- I'm trying to remember the question. How many times did Paul see you operate a chain saw before the day of his accident, right? I think that was the question. And you said numerous times, I think; is that right?

A Yes. Paul has seen me operate a chain saw before.

Q Before the day of his accident --

A Yes.

Q -- on numerous occasions?

A Yes.

Q Okay. And then you were describing when and under what circumstances?

A Yeah.

Q In addition to camping, those different camping trips, he would sometimes be on camping trips with you?

A Yes.

Q And he would see you operate a chain saw during those camping trips?

A Yes.

Q And you would see him operating a chain saw during those camping trips?

A Yes.

Q Okay. And putting the camping trips aside, had Paul ever seen you operate a chain saw any other time before the day of his accident other than on camping trips? And operate, if you want to know what definition of operate is, I'm happy to tell you that --

A Yes, please.

Q -- in my view but you can define it any way you want. Operate means using the chain saw to cut wood.

A No, starting a chain saw and making sure that it's running. That operating I thought you meant it running, not literally using it.

Q Okay. So let's -- Let me ask the question again now that we have the definition.

A Okay.

Q If we define chain saw operation as operating a chain saw so as to cut wood or cut any other object I guess for that purpose, have you now, based on that definition, ever -- has Paul ever seen you operate a chain saw before the day of his accident other than at camping trips?

A No.

Q Okay.

A No. No.

Q But when I've asked you about you seeing Paul operate a chain saw, you meant and referred to him using the chain saw to cut things, right, that was your answer?

A I've seen him using a chain saw to cut things, yes.

Q Yeah, okay.

A Yes.

Q So before the day of Paul's accident, setting aside the camping trips, Paul has seen you start a chain saw to get it running but not use it?

A Yes.

Q Okay. Under what circumstances?

A It's good to start a piece of machinery every now and then and you may --

Q Where and when? What are we talking about? At your mom's house?

A Yeah, probably in the garage there at my mom's house.

Q Because they had the chain saw?

A No, they didn't have the chain saw then. I'm -- You're talking about the chain saw that was in

the accident?

Q Okay. Let's go back.

A Or are you talking about chain saw in general?

Q Fair enough. Let me ask it this way: Did your parents purchase a chain saw to cut trees in 2011?

A I don't know.

Q All right. The chain saw that you were operating --

A Yes.

Q -- at the time of Paul's accident was your parents' chain saw, right?

A Correct.

Q When did they purchase that chain saw?

A Shortly before the incident.

Q Are we talking if the accident happened June 28th, sometime in June?

A I wasn't there for the purchase. I wouldn't know the purchase date.

Q Okay. Sometime that summer, though; fair enough?

A Yes.

Q Okay. And before they purchased that chain

saw in the summer of 2011, did your parents own any other chain saws to your knowledge?

A No.

Q Okay. So the chain saw that Paul would have seen before the day of his accident, see you start but not operate, would be the chain saw that your parents purchased in 2011 or some other chain saw?

A It would be some other chain saw.

Q Where? Putting aside the camping trips, remember I talked, putting aside that.

A Yes, in my mother's garage.

Q Whose chain saw was it?

A I don't even recollect. I, you know ...

Q Okay.

A It was a piece of machine I was starting to keep it in good working order.

Q Okay. But it wasn't your parents and it wasn't yours?

A That's correct.

Q Okay. How many times did he see you start a chain saw but not use it under your description before?

A I don't know.

Q Couple, maybe two or three times?

A I don't know. I don't know.

Q Okay. At least once; fair enough?

A At least once, yeah.

Q Okay. All right. Have you ever used a chain saw and operated a chain saw, meaning cut things for money in your life?

A No.

Q And, I mean, whether through your employment or through somebody just giving you money to do it, you'd never done it for money; is that fair to say?

A That's fair to say.

Q Okay. The work you were doing, and we're going to slowly get into that now, but the work you were doing for your parents on the day of Paul's injury, June 2011, was that work you were being paid for or not?

A Yes, I was being compensated.

Q Okay. So doesn't that -- isn't that contrary to the answer you just gave me then?

A No --

MR. CALLAHAN: I'd just object to form.

BY THE WITNESS:

A -- because you asked if I did it before that incident.

Q No, I did ever. My word was ever, but I'll say it again. Look it, I just want the truth. I don't care. If you don't understand my question, I'll restate it.

My question before, I think, if you looked at the record, said had you ever operated a chain saw for money. Now, maybe you meant before the accident --

A Yes, I did.

Q -- but I didn't phrase it that way.

A Okay.

Q So let's go back and correct it. Okay. We can do that.

The question is, ever means in your lifetime. Have you ever operated a chain saw for money in your lifetime?

A Yes.

Q Okay. And was that -- the times you did it for money, was that only with your parents?

A That one, yep, the occurrence that we're speaking of, that was the only time that I was paid.

Q The day of the accident?

A The day of the accident.

Q All right. Okay. Before the day of the

accident, had you ever cut -- Strike that. Let me -- Let me get ...

Before the day of your accident, had you ever cut any trees down with a chain saw or limbs, parts of trees, with a chain saw at your parents' house? Before the date of --

A Reask that question.

Q Pardon?

A Could you please reask that question?

Q Okay. Before the day of Paul's accident --

A Yes.

Q -- had you ever operated a chain saw at your parents' house, meaning to cut things?

A No.

Q Okay.

A No.

Q So the day of the accident was the first day in your life you ever operated a chain saw to cut things at your parents' house; fair enough?

A Yes.

Q Okay. All right. So I'm assuming, given that answer, the same answer would hold true for Paul. Paul never assisted and/or operated a chain saw to cut things at your parents' house before the day of his

accident; is that fair to say?

A Yes.

Q Okay. And I want to make sure you caught that I used the word assisted, meaning he never assisted anybody, whether yourself or anybody else, in the trimming of trees or cutting down of trees at your parents' house before the day of his accident; is that correct?

A That's correct.

Q Okay. Okay. Did Paul -- Well, let me ask it this way: How frequent in the year before the accident would Paul, to your knowledge, be visiting your parents' house?

A At least twice a month.

Q And would it be only to visit with you or would he be there sometimes when you wouldn't be there, to your knowledge?

A He would be there when I wasn't there.

Q When you weren't there?

A Yeah.

Q What was his -- and that's what I'm not sure about, what is his relationship with your parents that would make him come to your parents' house when you're not there, what's the --

A He would show up assuming that I was there and knowing my mother since they worked at the same place of employment, interacted there, that he would sit and just speak with them on a friendly basis.

Q Okay. So he was good friends with your parents?

A Yes.

Q Okay. Do you know if your parents still hold goodwill to him today or whether that has changed?

MR. BARCH: Speculation.

BY THE WITNESS:

A I don't know. You'd have to ask them.

Q Do you know if your parents have overheard Paul say anything that was uncomfortable or financially motivated relating to this claim at all?

A No, I believe that they have not.

Q Okay. And same with your wife? I think we already talked about that, right?

A Correct.

Q Okay. Would Paul have any reason, in your knowledge, to visit your parents when you weren't there? Now, I know he'd go there and you happened not to be there so he'd talk to them; but, I mean, was there anything that would take him to your parents'

house if he knew you weren't going to be there?

MR. BARCH: Speculation.

BY THE WITNESS:

A A friendship.

Q Go ahead.

A Friendship again.

Q Okay. So would there be times Paul would visit your parents' house merely to visit them and not even -- whether you're there or not?

A No, he would arrive there with the purpose of seeing me and me not being there, he would stay being congenial and friendly towards my mother.

Q Okay. And that's why I asked the other question; let me say it again. My question is, if Paul knew you weren't going to be at the house, would there be any -- ever any instance where you know that he would visit your parents' house anyway?

A That would be between Paul and my parents then.

Q So you don't know?

A I don't know.

Q Okay. That's what I was trying to get at.

A Okay.

Q Okay. Do you know if Paul ever worked at

your parents' house doing anything before the day of his accident?

A Yes.

Q What types of things would he do at your parents' house for work?

A Well, there was a large elm tree that was removed in the front yard by another provider; I do not know their name, and he said, I would like that firewood. So I helped him load it onto a large trailer and I believe that large pile of wood still sits on his property.

Q Okay.

A To some extent. He's used some of it.

Q What year would that have been?

A Just 2010.

Q Okay.

A Just before this incident where she was getting into the mode of upgrading the home, you know.

Q I get it. So it would have been the summer before this accident then?

A Yes.

Q Okay. So --

A Or it may -- it may have been that same summer.

Q Okay.

A That question would probably be better off answered by my mother.

Q So the answer is, I don't know the time, that's your answer when that happened? You don't know when that happened?

A It was before this occurrence and shortly before that.

Q Okay. But the work that you're describing in that answer that Paul did at your parents' house before the day of his accident was simply to collect wood that had already been cut up and pile it onto a truck to take it to his house?

A Correct.

Q Okay. So I guess my question was more designed toward did Paul do any work for your parents or for the property itself at your parents' property?

A Yeah, he --

Q Before the day of his accident?

A Yes, he moved a large load of wood onto a trailer removing it from their property for his own usage.

Q Okay. Just once?

A That day was the -- That day we made several

trips.

Q What day?

A I don't know exactly what day, that's what was in dis- -- and we were uncertain of as to right there but it was before this occurrence possibly that same summer.

Q All right. So this is what you're saying, you're saying before Paul's accident --

A Yes.

Q -- whether that year or the year before, there was an instance where an elm tree was cut down and Paul made one or more trips to collect the cut up wood on a pickup truck to take to his house?

A Correct.

Q Other than that, has Paul done any other work on your parents' house before the day of his accident?

A None that I'm aware of.

Q Okay. Do your parents have any experience or expertise in cutting down trees?

A No.

Q Okay. So other than hauling firewood from your parents' house on one or two occasions before the day of his accident, Paul never did any other type of errands around their house, the parents' house; is

that fair to say?

MR. BARCH: Foundation, but go ahead.

BY MR. MAST:

Q That you know of obviously.

A That I know of.

Q None?

A That I know of, none.

Q Okay. How long have your parents lived at that house?

A My mother, biological mother, has lived there since 1971.

Q And give us the address of the house so we could have that.

A 1016 West Elder, McHenry, Illinois 600, I think it's, 51 now. It may have changed.

Q Okay. And is that once -- And that's -- After your father passed, that's where she was remarried and began to live there then, correct?

A She was remarried be- -- No, she was remarried before his passing.

Q I see.

A Yeah.

Q Okay. So until you moved out of the house, you had lived at that house almost your entire

childhood, right?

A I lived there until I was 30 years old.

Q Okay.

A 29. 29. 29 years old. 1999 June 1st I moved to my new residence, which I currently live at.

Q From your -- From about four years old, right?

A Yeah.

Q Okay.

A Yes.

Q All right. And let's take you to the day of the accident. When were you first -- Well, strike that.

On the day of the accident, on the day the accident occurred, came upon you, did you already know your parents had purchased a chain saw?

A Yes.

Q Okay. And do you know the purpose of why they purchased it?

MR. CALLAHAN: I'd just object as being asked and answered.

But you may answer.

BY THE WITNESS:

A I don't know. I don't know.

Q Okay. When did you first know that they wanted you -- your parents wanted you to cut -- do some cutting with the chain saw on their property? When did you first learn that?

A Actually, I offered my services to them. They had need to rebuild a shed and with the shed down, there was an opportune time for trees to come down.

Q What shed down, what do you mean?

A There was an old shed that if -- since it was taken down because it was in disrepair, planning to put up a new one, there was an opportunity to now drop these trees where there was a clear field, clear area.

Q Fair enough. When was that that you offered your services to cut the trees down?

A Two days before the occurrence.

Q Okay. Were you at their house when this conversation arose?

A Yes, I was.

Q Okay. Was Paul with you?

A No.

Q It was just you and your two parents?

A Yes.

Q And it was discussed -- Did you bring up the

issue or did they bring up the issue?

A Well, as I've mentioned, it was an ongoing upgrading of the property and it was just discussed that now is an opportune time to do that.

Q My question was, who brought up the issue, if you know, about cutting the trees down?

A I did.

Q Okay. And it was something like, Hey, now's a good time with the shed down, why don't we cut those trees down?

A Yes.

Q Something like that. Okay. And there were three trees in particular that were --

A Two.

Q All right. Let me just finish the question. My question was, there were three trees in particular to cut down and you're saying there were only two?

A There are three trees that since that occurrence are now gone.

Q Right.

A Two of which were involved in the occurrence which were pine trees.

Q When you say involved in the occurrence, what do you mean?

A The ones that were being trimmed up, that were being considered to be removed at that time.

Q Okay. So let's go back to the conversation two days before Paul's accident when you brought up the issue of cutting the trees down, was the topic of cutting the trees down involving only two trees at that point?

A Yes.

Q And they were pine trees?

A Yes.

Q Okay. And how tall were the pine trees?

A I would -- In my best guesstimate, I would say 50 feet tall.

Q Both of them?

A Yes.

Q And they had been on the property ever since you knew?

A Yes. I watched my mother plant them herself.

Q Oh, okay. So when you were a very young child?

A Yes.

Q Okay. And what necessitated that they be removed given the rebuilding of the shed?

A At that time they had become large and an

overburden.

Q Just taking up a lot of space --

A Yes.

Q -- and in the way?

A Yes. Hanging over the area adjoining neighbors. They were a nuisance. They needed to come down. They weren't decaying at all, but they were -- they were too full.

Q So would the trees have been about over 25 years old then at the time?

A Yes. Yes.

Q But they were in good health?

A Yes.

Q So it was elective in taking them down, not a necessity, correct?

A It was a necessity as to -- Well, that was the opportune time. I mean, as I said, the shed was gone, so ...

Q I get it. I'm saying elective meaning that they didn't have to be taken down for the safety of anybody, they were being taken down more for convenience's sake; fair enough?

MR. CALLAHAN: If you know.

BY THE WITNESS:

A I don't know. I don't -- I don't really know at what point they chose to. I suggested that they come down and they chose to have me take them down.

Q Were they being taken down for any safety reason?

A No.

Q Okay. The third tree, what kind of -- The third tree that was taken down after Paul's accident, what kind of tree was that?

A It was an apple tree.

Q And that tree being taken down, at least in your view, had nothing to do with the shed issue then, right?

A Nothing at all.

Q Right?

A Yes.

Q Okay. And that's why you described earlier in the deposition the two trees, the two pine trees, were taken down in relation to this accident because you were taking trees down at the time of the accident or at least the intent was to take trees down at the time of the accident to make room for the shed?

A No, the shed was already standing before

that. It was torn down because it was in disrepair. It being torn down, it seemed as though it was an opportune time to take down these trees that were large and overgrown.

Q Okay. So you said, Hey, why don't we take down the trees now. It's a good time to take down the two trees, and they said yes, right?

A Yes.

Q Okay. Did you tell them how long it would take to do the work?

A No.

Q Did they offer you to pay you -- Did they offer to pay you some money to take the two pine trees down?

A Yes.

Q How much?

A It was a matter of hourly wage, $15 an hour.

Q Was there any scope discussed as far as how long it was going to take you to do the work?

A No.

Q Any time frame on how long it would take you to do it?

A No.

Q And the scope of the work that at least as

discussed was just taking the two pine trees down, correct?

A Yes.

Q All right. And that would include the limbs, cutting it up into wood, and then hauling it off the property?

A Not hauling it off the property; that's why I was cutting up the limbs to stack it on the property.

Q Okay. So that -- Just fair enough. I just want to get the scope of it. The scope was cutting the tree down, including all limbs and parts of the trees, the two trees, and getting them cut up into stacks and then stacking the wood?

A Yes.

Q And then that would be the end of the work?

A Yes.

Q Okay. And it only involved those two pine trees, right?

A Yes.

Q Are you aware of any photographs that show those pine trees before they were cut?

A No.

Q Or during them being cut?

A No.

Q Or after they were cut?

A No.

Q Or how they are today?

A No.

Q Okay. Once you discussed two days before Paul's accident doing the work and how much you were going to get paid, what was the next step in your preparation for doing the work?

A I by myself trimmed the trees up to about 40 --

Q No. No. You went -- You jumped too far ahead. Let me just -- I said the next step. So the next step would be two days later showing up on the property, getting ready to cut them off then, I'm assuming, right?

A Mm-hmm.

Q Yes?

A Yes.

Q Did you do anything in the interim to prepare, like go buy a set of gloves or something? I'm just trying to find out what you had to do.

A No.

Q Okay. When you cut trees of this size and nature down, do you have to wear goggles?

A I suppose that a person should.

Q Did you?

A No.

Q Did you wear a helmet?

A No.

Q Gloves?

A Yes. Yes.

Q Okay. Work gloves?

A Yes.

Q Boots?

A I can't recollect if I was wearing boots or shoes that day.

Q Okay. Any other type of particular things that you would wear specific to cutting trees down?

A No.

Q Other than gloves and clothes?

A No.

Q No. Okay.

Who decided the day that you were going to start the work?

A I did.

Q Okay. Did you just show up out of the blue or did you say, I'll be back in two days to start the work?

A I said that I'll be back and start the work on a pre- -- on the day, you know, the day I began --

Q Okay.

A -- which is two days before Paul's -- the incident happened.

Q Right. So we're two days before the accident, you talked about what you were going to do, how much it was going to cost, blah-blah-blah, and then did you say, I'll come back in two days to start the work, or how was it decided when you were going to start the work?

A It's my mother. It's kind of a free -- You know, it isn't like I've got to show up for work at 10:00 o'clock. It wasn't really decided. I showed up at my own accord and began to work.

Q That's all I'm asking you.

A And then I --

Q That's fine. So you showed up when you wanted to, right?

A Yes.

Q Okay. So there wasn't any preset day that you were going to start the work?

A No.

Q Is that correct?

A That's correct.

Q Okay. And when you showed up on June 28, 2011, was that the only thing you were going to do there that day at your parents' house is cut those two trees down?

A That day that I showed up, I was only going to trim the branches off of the trees.

Q Prepare them for, like, the next day's work of starting to cut them down?

A Yes.

Q Okay. Were there a lot of branches on each tree?

A Yes, it's a pine tree.

Q Okay.

A There's many branches on pine trees.

Q And the branches can get thick as well, right?

A Thick by way of ...

Q By way of being just thick.

A Diameter?

Q Yeah.

A No, not really. Branches --

Q I mean, we're not talking like a half an inch around. We're talking they can be several inches

around even on the branches.

A There were no limbs on that tree that were probably over 3 inches in diameter.

Q Okay. Fair enough. Let me ask that then, just it sounds like you have some understanding. Of the two trees, how many trees would you say were about 3 inches in diameter on both trees?

A How many branches?

Q Were 3 inches in diameter at one side or one end?

A Between the two trees?

Q Yep.

A Six.

Q Okay.

A The lowermost were the thickest.

Q And were you going to start at the bottom and go up or start at the top and go down?

A Start at the bottom and go up.

Q Okay. So if the first day of work -- And that was the day Paul was injured, the first day of work, right?

A No. The first day of work that I performed on those trees was the day before Paul showed up. I had already cut down all the limbs off the trees.

Q All right. Hold on. You're going too fast so --

A Okay.

Q -- let's slow down a little bit. You showed up two days after speaking to your parents to work so that would have been the day before Paul's accident?

A Yes.

Q Okay. So that would have been the 27th?

A Yes. It was preparatory work, you know ...

Q I understand that, but I want to go step by step. So on June 27 you show up at your parents' house?

A Yes.

Q Which is two days after you first talk to them about this and you showed up to do the preparatory work?

A Yes.

Q Okay. And how long were you on their property that day, on the 27th?

A Four hours.

Q And what did you do during that four hours on the 27th?

A I trimmed branches up to about 40 feet on both trees.

Q Up?

A Up. From the bottom going up.

Q You've got to let me -- We've got to go back and forth with this because I'm not going to understand you. You're saying from the ground up 40 feet high you trimmed all the trees off of those two trees -- all the branches off those two trees on June 27th?

A Yes.

Q And they were now all on the ground, those limbs?

A Yes.

Q Correct?

A Yes.

Q How many limbs are we talking?

A I don't know.

Q Like 30, something like that?

A I would say more than that. You're talking about 40 or 50 feet and if a pine tree has a limb at every foot or so, you can pretty much figure out it probably would be more like hundreds.

Q Hundreds of limbs?

A Yeah.

Q Okay. Varying sizes?

A Yes.

Q Okay.

A Decreasing in diameter as we went higher, of course.

Q Okay. And did you work by yourself on that day, the 27th?

A Yes.

Q So Paul was not on the property on that day, correct?

A Correct.

Q By the time you were working on the property on June 27th, 2011, did Paul know the work you were doing?

A I don't know.

Q Okay. When did you first talk to Paul about what work you were going to do on your parents' house with these trees in June?

A On the 28th I had made my travels to my mother's house after doing the preparatory work on the 27th, and I figured that Paul, since he was sitting idle and unemployed and we worked together on trees before, that he would possibly want to give a hand in helping me to get rid of the scrub that was already on the ground.

Q So you called him?

A I stopped by his home.

Q Before getting to your parents' house?

A Yes.

Q And was Paul home?

A Yes.

Q And did you say, Hey, I'm cutting some trees down at my parents', do you want to help clean some of it up?

A That's what I said.

Q Okay. Did you say anything else differently than what I've just said?

A No, basically would you like to give a hand at my mother's property to help me clean up the brush I cut down.

Q Now, my assumption, you can correct me if I'm wrong, but at least that conversation at Paul's house the day of his accident, my assumption is you weren't asking him to help you cut the tree down, but you were helping him deal with what was already cut?

A Yes.

Q Okay.

A Our intentions that day were not to take the trees down; it was to clean up the brush on the ground

itself that I already cut the day before.

Q Was your intention on that day, the 28th, to do any use of the chain saw?

A Yes.

Q Okay. You were going to cut up the limbs that were already on the ground?

A Yes.

Q Had you begun to cut any of the limbs on the ground the day before?

A The larger ones I had already cut on my own into sections.

Q On the 27th?

A On the 27th, yeah.

Q Okay.

A And then realized I'm going to need help.

Q Okay.

A You know, there's a lot here.

Q So the 27th now, the four-hour work you --

A Yeah.

Q -- the four-hour work you did on the 27th included trimming up 40 feet on each tree and then trimming up some of the larger limbs that are on the ground now cutting them up?

A Yes.

Q Okay. Then you get to the 28th and realize this is a pretty big amount of work to do, you could use some help?

A Yes.

Q Okay. And what specific task did you expect Paul would be needed to do at your parents' house when you spoke to him that morning before going to the house?

A There was really no outline. I just simply went to a friend's house and asked him if he'd like to help me with my chores that I was doing that day. I told him it was brush that was on the ground, and I would like to cut it up for firewood or just to get -- consolidate it into a pile so it could be stacked.

Q Were you planning on him using the chain saw at all?

A No.

Q Okay. You were going to be the one to use the chain saw?

A Yes.

Q And did he ever use the chain saw that day?

A No.

Q Okay. And I mean the day of his accident, he never used a chain saw?

A Correct, he did not use the chain saw on the day of his accident.

Q Okay. All right. Now, when you use the word brush, having Paul help you clean up brush, you mean the limbs that are on the ground that you cut the day before, right?

A Yes.

Q Okay. Not just a bunch of leaves and stuff. It was the limbs, the actual limbs themselves?

A The actual limbs, yes.

Q So the assistance that Paul was going to give since he wasn't going to be using the chain saw the day of his accident, was that to hold the limbs while you cut them up?

A It wasn't intended to be that way and I didn't direct him to do so. We just kind of got to work and that's the technique that we both were comfortable with --

Q Okay.

A -- and then from there moved forward with doing that.

Q Fair enough. So the morning of Paul's accident before you got to your parents' house when you went to Paul's house to talk to him, you didn't

talk details, you just said, Hey, Paul, I need some help cutting up some brush at my parents' house, can you give me a hand?

A Yes.

Q Okay. And he said yeah?

A He said yes.

Q Did you work on any arrangement where he would get paid or was it just for him to volunteer?

A At that time there was no questions about money.

Q Okay. What was your assumption then, if you had any?

A That maybe we can get the job done before the day was over.

Q So all the limbs that you had already cut that were on the ground, which you described as maybe hundreds, hundreds in plural --

A Mm-hmm, right.

Q -- you were hoping to at least get those all cut up that day?

A Yes.

Q Okay. And what was your assumption as far as what, if anything, you were going to pay Paul, if you were going to pay him anything? I don't know.

A Equal to what I was being paid, $15 an hour.

Q Oh, so your parents were going to pay now both of you $15 an hour?

A I was assuming that they would.

Q Okay. Did they ever agree to before Paul's accident?

A No.

Q Okay. Had you ever talked to Paul about that arrangement before his accident?

A No.

Q Okay. That was just your -- kind of your --

A Yeah, I was going to --

Q Hold on. Hold on. Let me finish the question. That was just your kind of own assumption?

A Yes.

Q Okay. Did Paul leave with you to go to your parents' house or did he come at a different time in a different vehicle?

A He came about a half-hour after I had asked him to in his vehicle. Could have been more.

Q Okay.

A Somewhere between a half-hour and an hour before he arrived.

Q Fair enough. What time did you arrive at

your parents' on the day of Paul's accident on the 28th?

A 10:00, 11:00 o'clock. Before noon.

Q Okay.

A That's the best I can recollect.

Q Okay. And how long did you anticipate it was going to require both you two to cut up these trees as you said completely?

A I have no --

Q These limbs. I'm sorry.

A I had no estimate in my mind or need to construct one. I just was going to work with a friend and get the job done.

Q Okay. Were you expecting, though, that it would be done that day?

A I was hoping. I wasn't expecting.

Q Okay. Okay. So if you arrived from 10:00 to 11:00 sometime that day of Paul's accident, you're saying Paul would arrive somewhere around 10:30 to 11:30?

A Yes.

Q And he arrived alone in his car?

A Yes.

Q Okay. And we're going to have to use some

kind of time frame that we can agree on even though we're not sure just so that we can do the chronological order of things here. So if we assume that -- and, again, I know this is just an assumption but just for the purposes of figuring out when things happened, if we assume you arrived at 11:00 and Paul arrived at 11:30, okay?

A Mm-hmm.

Q All right?

A Yes.

Q How soon after Paul arrived at 11:30 would his accident have occurred?

A I believe about an hour.

Q So if he arrived at -- If Paul arrived at 11:30, his accident happened around 12:30; fair enough?

A Yes. Or if arriving at 10:30, the accident happened at 11:30.

Q I get it. I get it. We can do that, I'm just -- I want to get the chronological time frame. So if we assume you get there at 11:00, Paul got there at 11:30, his accident happened around 12:30; fair enough?

A Yes.

Q Okay. And when Paul's accident occurred, he was in the midst of helping you cut up these trees, right?

A Yes.

Q Okay. Other than you and -- Were you also in the midst of cutting down -- helping cut up the trees?

A Yes, I was -- Yes, when he showed up, I was already in the process of working.

Q All right. So when Paul's accident occurred, both of you were working together to cut up these trees?

A Yes.

Q Was anyone else working with you two?

A No.

Q Was anyone else watching you two?

A No.

Q Were your parents in or out of the house during the time that Paul had arrived up to the time of his injury?

A They were in the house.

Q Okay. Do you know if your parents even knew Paul was over?

A Yes, they did because when I arrived I told them that Paul would be coming over to help me.

Q Okay. And that's fine but that's not quite what I was asking. Do you know if your parents knew he was actually on the property at the time of the accident?

A Yes, they did know that he was on the property.

Q How did they know that?

A Because his vehicle was parked outside and they could visually see that his vehicle was there.

Q Okay. And they can connect the dots; I get it.

A They see him. Okay. Sorry.

Q I can't talk while you're talking. Let me --

A I know.

Q My question was, at the time of Paul's accident do you know if your parents were aware that he was on their property? Even they could have looked out and saw the car, I get it, but do you know if they were aware?

A I don't know.

Q Okay. Do you know anyone that was aware Paul was on your parents' property at the time of his accident other than you?

A No, I do not know.

Q Okay. Were there any visitors or witnesses to the work on the property at your parents' house for the hour Paul was there leading up and at the time of his accident?

A No.

Q Okay. So the only witnesses you're aware of of the circumstances leading up to the accident and Paul's accident itself, the only witnesses to that are you and Paul, right?

A Correct.

Q Okay. All right. Now, I've got to ask a few questions that -- don't take it personally but these are just questions we always ask in these depositions of witnesses, okay? So it's nothing against you, it's just we always ask these.

Any alcohol to drink that day?

A I don't drink alcohol.

Q Okay. Any medications?

A None.

Q Any drugs anyway?

A No.

Q Any type of drugs?

Paul, same question for Paul, if you know, drugs, alcohol?

A Paul's not a drinker to my knowledge, and I wouldn't know about any prescribed drugs because I'm not him.

Q Okay. Did Paul seem to be acting normal leading up to the time of his accident?

A Yes.

Q Were you having any internal stressors or any problems internally for you at the time of this?

A No.

Q Okay. Were your parents keeping any type of watch over the work you were doing to kind of see how things progressed?

A No.

Q Okay. So the -- from the beginning to the end, the work that was being done by you to cut the trees up was done under your own supervision, under your own control?

A Under my supervision.

Q Yeah. Was anybody telling you what to do and how to do it?

A No.

Q Were your parents in any way telling you how to do things as far as cutting up the trees?

A No.

Q How you did it, the method and means for cutting up the trees, was that done under -- by your own control and your own decisions?

A By my own decisions.

Q Okay. The manner in which the work was being done at the time of this accident, was that done in the manner that you wanted it to be done?

A Until Paul arrived.

Q Okay. How about when Paul arrived, did he change things?

A He chose -- He chose to take up his own technique or helping, and I went along with it because we worked together in a good fashion for so many years previous to that.

Q Leading up to the time of his accident, okay, was Paul doing anything wrong working at the property?

A No.

Q Okay. Was he doing everything appropriately?

A It seemed so.

Q Okay. And did you have to criticize him or instruct him to do things differently because you were not happy with the way Paul was doing his work leading up to the time of his accident?

A No, I gave no instruction basically to him.

Q You left it up to him to do the best for him and you did the best for you?

A We've worked well together in the past. There was no need for instructions. It was a mutual understanding of two men working together.

Q Okay. But is my question correct, you left Paul to work appropriately under his own control and you were to work appropriately under your own control --

A Yes.

Q -- correct?

A Yes.

Q Okay. And leading up to the time of Paul's accident, did you notice Paul doing anything unsafe or wrong in your view?

A No.

Q Leading up to the time of the accident, did you believe you were doing anything unsafe or wrong in the process of the work leading up to Paul's accident?

A No.

Q Okay. When Paul was -- Well, Paul was eventually cut by your chain saw, correct?

A Paul was cut by a chain saw.

Q A chain saw that you were using and

operating, right?

A Correct.

Q Okay. I said your chain saw and you're probably saying well, it wasn't my chain saw; that's what you're thinking, right?

A That's correct, yeah.

Q Okay. But it was -- When I meant your chain saw, I meant the chain saw you had control of, correct?

A Then that's what I'll agree to, yes.

Q All right. So you're agreeing and accepting the fact that Paul was, during the process of working at your parents' house, cut by a chain saw while you were holding the chain saw and while it was running, correct?

A Yes.

Q Okay. And -- Oh, here it is. I was looking all around for these; they're right in front of me.

These photographs were marked during Paul's deposition, okay? All right?

A (Nodding.)

Q You have to answer a word.

A Yes.

Q All right. Do you know, without looking at

the photograph, where Paul was cut by the chain saw you were operating at the time of his accident on June 28, 2011, on his body, where?

A Yes, exactly where.

Q Where?

A On his right forearm.

Q Okay.

A (Indicating.)

Q Is that the only place he was cut?

A Yes.

Q Okay. I'm going to show you a photograph. I just want to make sure it's the same injury that he talked about, okay?

MR. CALLAHAN: Can I take a look? Thanks.

BY MR. MAST:

Q We've got what's marked as Exhibits 2A, 2B, 2C, 2D, 2E, 2F, 2G, 2H, 2I, 2J, okay?

A Yes.

Q These aren't all I'm going to ask you about but the first page, 2A, does that appear to show his right arm and the scarring where he was cut by the chain saw you were operating at the time of his accident?

A Yes.

Q Okay. Is that the only spot he was cut shown in this photograph?

A Yes.

Q Okay. And maybe you can't tell on 2B, but I think that's the same injury. Can you tell?

A Sure looks good to me.

Q Looks like the same one?

A Yeah.

Q Okay. How about 2C, does that look like the same injury?

A Yes, it does.

Q 2D. If he has his hand down to his right, it would be on the backside of the --

A Yes.

Q -- forearm, correct?

A Yes.

Q And that's where it shows on 2D?

A Yes.

Q And that's the injury that was caused by the chain saw you were operating at the time of the accident?

A Yes.

Q Okay. All right. So Paul arrived about a half an hour to your parents' house after you arrived

on June 28, 2011, right?

A Yes, about a half an hour.

Q And by that time, when Paul arrived at your parents' house, you had already been working?

A Yes.

Q Okay. So you had the chain saw in hand and you were cutting things or not?

A No.

Q What were you doing?

A I was sorting.

Q You were what?

A Sorting the branches. When you have pine trees, they get snaggled, snarled, and tangled together. I was placing them so that they could be fed in a safe manner as, you know, to lift it up and to work with it.

Q Okay. What was the manner which you wanted to use to -- Well, strike that.

Having Paul come and assist you, did you have an expected manner in which you preferred to have him assist you?

A No.

Q So you just left it up to him to decide?

A Well, he showed up and as I had said, we just

worked well together. We understood one another.

Q But my question was --

A I didn't specifically have any expectations or did I direct him to do anything.

Q So my question then was, did you just leave it up to him to decide what to do and how to help you or did you have to tell him, Hey, hold that branch. I'll cut that branch?

A I left it up to him.

Q So how would he know what branch you wanted to cut unless you told him what branch to cut?

A He didn't cut. He held.

Q How did he -- I'm sorry. I didn't say it right. How did he know what branch to hold unless you told him what branch to hold?

A I didn't tell him. He chose --

Q How would he know then is the question.

A You'd have to ask him. I don't know.

Q Well, was he supposed to just guess what branch to hold on to?

A There was no guessing, but ...

Q How was he going to know then?

A Because we've done this before. We've watched each other work. We've worked with tools

before in the past.

Q Okay. But that's not my question, okay? We're hoping that he's going to hold the branch you're going to end up cutting, right, the same branch?

A I never intended him to hold the branch.

Q Okay.

A He chose to hold the branches.

Q All right. So you're telling me -- Well, what work were you wanting Paul to help you with then?

A There was moving material, there was stacking wood, there was raking the ground.

Q Moving material, stacking what?

A Stacking wood.

Q Okay.

A And raking.

Q Was there a rake available?

A Was there a rake available?

Q Mm-hmm.

A Yes.

Q Okay. Stacking wood meaning after it's all cut up into little foot pieces, you would stack them up --

A Into 18 inch pieces.

Q -- to store them, correct?

A Into 18 inch pieces and then stack, yeah.

Q You're doing fine but please let me finish my question before you get to the answer, okay, because we're going to have a hard time if we don't have separation, okay? So maybe give me one beat after I'm done and then give me your answer, okay?

Moving material meaning what?

A Once it's cut, to stack it and then to clean up the area where we were working.

Q All right. So moving material, stacking the wood, and raking up the debris, those were the three things you envisioned Paul was going to assist you with?

A Yes.

Q Okay. Before Paul arrived at the property, were you envisioning that he was going to help hold some of the branches so you could cut them?

A No.

Q That was not even in the back of your mind?

A No.

Q Okay. Did you not want Paul to help hold the branches or you just didn't know if he was going to or not?

A I didn't know that he was going to do that.

Q Okay.

A No.

Q Did you want him to hold the branches or did you not want him to hold the branches or did you not care?

A It wasn't a matter of not caring. He chose to and then we went with it.

Q Okay. So was that appropriate for you that he hold the branches for you then?

A It seemed to be appropriate at the time.

Q Okay. I'm just trying to find out whether he was holding these branches --

A I understand.

Q Hold on. Hold on. I'm trying to find out whether he's holding these branches against your will or not. Obviously there was some --

A No, he was not holding them against my will. He was helping --

MR. CALLAHAN: Wait until he finishes the question.

THE WITNESS: Okay. I thought he was finished.

BY MR. MAST:

Q So he was holding the branches ultimately and eventually with your acceptance and permission; fair

enough?

A Acceptance, yes.

Q Well, if you didn't permit him to do it, you would have told him not to, right?

A I don't control Paul's hands nor did I direct him to do it at that time. He chose to pick them up and we both started working together and that's the method we chose. It wasn't like hey, this is right or wrong; we just went to work.

Q I understand. This is what I'm saying, if Paul did something you didn't want him to do, you would tell him not to do that, I assume, right?

A I suppose, yeah.

Q Okay.

A Yes.

Q Did you ever have to tell Paul not to do something before he got hurt and got cut by the chain saw?

A No.

Q Okay. So up to the time that Paul got hurt, he was doing the work in a way that was okay to you, correct?

A Yeah.

Q Okay.

A Yes.

Q And he was doing the work in an appropriate way to you, correct?

A Appropriate?

Q Yes.

A To me?

Q Right.

A Acceptable. I don't know about appropriate. If you want to look up what is the definition of appropriate.

Q Okay. You just don't know what the word means. Okay. Because I can -- I can use a different word.

A Oh, no, I know what the word means, it's the way you're using it. You're telling me that I deemed it appropriate that his actions what he was doing without me telling him to do anything different were okay or not okay, and what I'm saying is that it was two friends -- Let me just have one moment.

Q Go ahead.

A And it was two friends working together who have worked in similar situations, and I guess our assumption in it was that we knew what we were doing, the both of us. I didn't think that Paul would

jeopardize himself or me and likewise.

Q Okay.

A That's where we were at.

Q So my question is, was Paul doing everything leading up to the time he was hurt in an acceptable fashion to you?

A Yes.

Q Was he doing anything inappropriate before he got hurt?

A No.

Q Okay. Had he been doing -- Had Paul been doing something inappropriate prior or at the time he got hurt, you would have told him not to do that, correct?

A Again, inappropriate, I don't under- --

Q Okay. If he was doing something unsafe, you would have told him not to do something unsafe, correct?

A That wasn't even really considered. It wasn't -- I'm honestly telling you that it wasn't a thought in my mind at the time.

Q I'm not asking you if you considered it. If you can say -- Hold on. Wait. You stopped. Let me go. If you don't know, you can just say I don't know

but the question is if Paul was doing something unsafe, would you have told him or directed him not to do something unsafe?

A Yes.

Q Okay. That's all I'm asking. So your testimony is that you never told Paul once what to do prior to his injury on that property, correct?

MR. CALLAHAN: I just object as to form of the question.

BY MR. MAST:

Q Is that correct or not?

MR. CALLAHAN: You may answer.

BY THE WITNESS:

A Ask the question again, please.

Q My under- -- Strike that.

Did you ever tell Paul what to do or how to do it before he got hurt by being cut by the chain saw on the date of his accident --

A No, I did not.

Q -- at your parents' house? Huh?

A No, I did not.

Q Never told him what to do?

A No.

Q Never told him how to do it?

A No.

Q Okay. So when he first arrived at, let's say, 11:30, what was the first thing he did?

A He was watching me sort the branches and said, What can I do to help? And I said --

Q Let's go step by step. Okay. So he was watching you sort branches, right?

A Yes.

Q Okay. I want to go just step by step now because we're going to get toward the accident and I don't want to go too fast, okay?

A Okay.

Q So let's go step by step here. He got there. You were sorting branches. You mean putting them in piles?

A No. They were already in a pile and as I had mentioned earlier, pine, when you cut it, it needs to be addressed or orientated. If you put branches like this, it's going to pull out unsafely. So if you stack them with the cut ends like this, you can easily pull them off one another.

Q Okay.

A That's why I was sorting, so that it would go ...

Q I got it. Sorting branches. Paul gets there and says, Can I help, right?

A How may I help.

Q How may I help. Okay.

And what do you say?

A I said, Well, I'm sorting branches. I guess you can start by doing that.

Q Okay. So you had him start sorting branches with you then?

A Yes.

Q Okay. And how long was he sorting branches with you?

A Maybe another 15 minutes after I had spent some time doing it myself.

Q All right. So -- Got you. So now we're at about -- and I know these are just guesstimates, but I just want to get a chronology. We're at about 11:45 now, okay?

A Mm-hmm.

Q Yes?

A Yes.

Q What happens next?

A The piles were sorted, time went by and chose to start cutting the branches up. At first we had

placed them on these horses.

Q Well, wait. You're going into detail now. I want to go step by step. The next step; that's all I asked.

A Okay.

Q The next step was to start cutting the branches up?

A Yes.

Q Okay. Who decided to start cutting the branches up? Was that your decision?

A Yes.

Q Okay. So after the piles were sorted, you said, Let's start cutting the branches, right?

A Yes.

Q Okay. And did he say, Can I help?

A He was there to help. I don't recollect if he specifically said --

Q Okay.

A -- that.

Q So when you started cutting the branches, what was Paul's task during the cutting of the branches?

A To put them on the horses.

Q The sawhorses?

A Yeah.

Q How many sawhorses do you have?

A There was two there.

Q And how far apart were they spaced?

A Four feet.

Q And were you going to be putting them on the sawhorses too or was that only what Paul was going to do?

A That's what Paul was going to do, remove them from the sorted piles onto the sawhorses.

Q And when he puts them on the sawhorses, you were going to cut them up with a chain saw?

A Yes.

Q Okay. Who told Paul or who gave Paul that job task? Was that you?

A Yes.

Q Okay. So the next step, piles are sorted now, let's start cutting the branches. Paul, why don't you put the branches on top of the sawhorses and me, meaning you, I'll cut these branches on the sawhorses up with the chain saw. That's the -- what's going on, right?

A Yes.

Q Okay. How long did that occur?

A Ten minutes.

Q All right. So we're getting close now to noon. What happens next?

A Paul opted to stand them up.

Q Wait. Wait. Say that again. I missed that.

A Paul opted to stand them up instead of working on the sawhorses, and I just continued cutting. It seemed like it was okay to do.

Q Okay. Fair enough. So instead of putting the branches across the two sawhorses, you're saying Paul on his own opted to stand them up aside of the sawhorses?

A Yes.

Q So it would be leaning up against just one sawhorse?

A No, freestanding large end.

Q Oh, you mean and hold them with his hand?

A Hold them with his hand. He was holding them with his left hand to make a point of that.

Q Got you. Got you. Okay. So instead of using the sawhorses, you're saying Paul decided to hold them by himself with his left arm up while you cut them from ground up; is that right? I need an answer.

A Top down.

Q Okay. So let me say it again then. Instead of using these sawhorses, you're saying Paul took it on his own to hold the branches with his left arm up and the branches down to the ground and you would cut from the top down to the ground each branch, right?

A Yes.

Q And that was Paul's chosen way that he was going to hold the branches?

A Yes.

Q Did you in any way voice any objection to him doing it that way?

A No.

Q Okay. And for how long a period of time were you cutting these branches in that manner where Paul was holding them up with his left arm to the ground and you were cutting them from the top down?

A 20 minutes.

Q Okay. So now we're at about 12:20, if my math is correct. Is that about right?

MR. BARCH: Hans?

MR. MAST: Yes.

MR. BARCH: Can I just ask, are these little horizontal cuts or are we talking --

MR. MAST: Well, I was going to get to that. I want to first get the time line down. Yeah, we'll get to that, but I will ask it now then.

BY MR. MAST:

Q So Paul is holding the limb -- the branches up with his left arm over his head, the branch is now from his left arm and hand going down to the ground and you were starting up below his hand and cutting every 18 inches?

A No, I was cutting the branches off of the limb.

Q Got it. So you were cutting vertically up and down. While he was holding the tree vertically, you were cutting the horizontal branches in a vertical fashion --

A Yes.

Q -- from a top to a bottom?

A Yes.

Q And I imagine each branch has probably 30, 40, 50 little --

A I would --

Q -- branches off of it?

A I would say --

Q Hold on. Let me finish the question.

A Okay. Sorry.

Q Let me say it again now. Every branch or limb or whatever that Paul's holding above his head with his left arm, I'm assuming those branches, if they're reaching to the ground, are going to have 30 to 40 little branches coming off of it horizontally, correct?

A Not that many.

Q Okay. Maybe 20 then?

A Or less.

Q Okay. So those are the 20 little branches coming off of that branch that Paul was holding vertically that you were cutting?

A Yes.

Q And then the branch would be left bare branch from his hand to the ground?

A Yes.

Q And then what would he do with that branch then, set it on the sawhorses to be cut up?

A Set it off to the side. We never got to actually cutting up the whole load of wood because of what --

Q Happened?

A -- happened, yeah.

Q His injury?

A Yes.

Q Okay. So for 20 minutes you and Paul worked where he would hold a limb up with his left hand over his head and the branch would be vertically down to the ground and you would be cutting from top to bottom each of the little limbs, 20 or so, off of that branch he was holding?

A Correct.

Q And how many separate branches did you do for that 20 minutes? How many separate branches did Paul have to hold?

A I'll estimate between 25 and 30.

Q Okay. And then what happened after that 20 minutes of doing that work? What was next?

A We arrived at a branch being held in the same fashion that was a little flimsy and in making the first cut, that went well as the uppermost one, second one and of course a pine, you know, they're left and right so I'm not just cutting on this side. I'm over here, over here, taking it down, taking it down. One didn't go through; and at the same time I went to go make the second cut, he put his right hand down to support it so it wouldn't bow and it did go through

and it just nicked his arm.

Q Okay.

A And that's -- that's what happened.

Q Fair enough. Now, that's the one that sounds like where his accident happened, right?

A Yes.

Q Okay. Because -- I see. Okay. Because if Paul arrived at 11:30, you're saying his accident happened around 12:30 which would be about the time where we reached going through the task by task, right?

A Yes.

Q I got you. Okay. So were you still working at the time of Paul's injury with being cut by the chain saw in the manner of where he's holding the limbs up -- the branches up with his left hand over his head and you're cutting the horizontal branches off of that branch? You're still doing that at the time of his injury?

A That's what we were doing at the time of the injury.

Q Because you said you only did that for 20 minutes and then you did something and I thought you were going to say you were doing something

differently. You were still doing that at the time of his injury, right?

A We stopped as soon as he was injured.

Q Okay. Let me ask it this way: Once Paul opted to hold the branches up with his left hand instead of using the sawhorses and you started cutting the limbs now off of that branch --

A Yes.

Q -- and you said you did 25 to 30 of those branches --

A Yes.

Q -- the last branch you did, is that the branch that Paul was holding when he was hurt?

A Well, it was the last branch that we did because he did get hurt.

Q That's what I just said.

A Yeah, we just stopped.

Q Let me say it again because I want --

A Yes, I agree.

Q Let me say it again.

A Okay.

Q You gave an estimate of like for 20 minutes you were cutting these horizontal limbs off of a branch that Paul was holding overhead, remember that?

A Yes.

Q You said you did that for about 20 minutes.

A Yes.

Q And you did 25 to 30 separate branches, right? Right?

A Estimating, yes.

Q Okay. The last branch that you did in that fashion, is that the branch that Paul was holding when he was cut?

A Yes.

Q Oh, okay. Because this is why I was a little confused. You said at around 12:00, and I know we're just doing estimates on times, but you said around 12:00 you did -- for 20 minutes you cut those 25 to 30 branches; so I thought there was something else you were doing then after that by the time Paul got hurt, but that 20 minutes is inclusive of the time of his injury then, right?

A Yes.

Q Okay. So really the time frame you gave me from the time Paul arrived at 11:30 until his accident was more 50 minutes; does that sound about right?

A It's really hard to recollect the time frame when it wasn't relative at the time. There was --

Q I understand that.

A Let me finish, please. There was no time frame of getting the job done nor was I aware of the exact time that it happened because what was most important at that time when it did happen was to get him to the hospital.

Q I understand.

A And the only time that -- And the only time that I checked the clock is when we checked into the emergency room.

Q I understand all that.

A Okay.

Q That's not what my concern was. My concern was you gave me an hour after Paul arrived is when his accident occurred but the time line we gave was only 50 minutes by the time his accident occurred.

A Did you say 50 minutes?

Q 50.

A Okay.

Q So I just want to make sure we're not missing some other element of work that he was doing.

A No. No, we're not.

Q Okay.

MR. BARCH: I'm going to object because he's been

giving estimates all along, but go ahead.

BY MR. MAST:

Q All right. So under the estimates of time that we're giving, Paul arrives around 11:30, you start the type of work that Paul is holding the trees up by his left hand overhead as opposed to using the sawhorses around noon. You do that for about 20 minutes in your estimate and that's when he's injured, correct?

A Yes.

Q All right. So that last branch that Paul was holding when he was injured, that's what I want to talk about now. And that was a branch similar to the 25 or more before that, right --

A Yes.

Q -- that you were cutting, correct?

A Yes.

Q And you had cut these branches 25 to 30 times without incident, without any problem, correct?

A Yes.

Q And that Paul was holding the branches the same way in all those 25 to 30 times without incident, correct?

A Yes.

Q Okay. And they were all being held over Paul's head if Paul's 5, 8, then they were probably what, maybe six and a half feet over his -- or six and a half feet from the ground?

A They varied in amount of debris on each limb and height. As you go up a tree --

Q Okay.

A -- the lengths diminish.

Q So sometimes Paul is holding the branch directly out?

A Deviating between four and six --

Q You've got to let me finish my question, and you can answer in any way you want but at least let me finish.

So Paul might be holding some branches out directly out from his chest, some over his head just varying -- depending on height --

A Yes.

Q -- of the branch?

A Yes. Yes.

Q Okay. So anywhere from four feet off the ground he might be holding a branch to six and a half feet to maybe seven feet?

A No, not six and a half feet. I would say

somewhere between four and five feet.

Q Okay.

A Somewhere in and around just right here.

Q Fair enough.

A Yeah.

Q So Paul is holding with his left arm -- or left hand out from his body extending out the branch is from anywhere from four feet off the ground to five feet off the ground, correct?

A The point where he was clasping that limb, yes, would be four to five feet above the ground.

Q And then underneath where he's grasping is where you're cutting?

A Correct.

Q The first cut that you're going to make is the highest off the ground is how far under his hand?

A A foot and a half, foot. So it really depe- --

Q All right. A foot and a half or a foot?

A May I finish?

Q Well, it's going to be best if you just answer what I'm asking and not try to add on every time.

A (Inaudible) sit here through that. I'm

sorry.

Q What's that?

A I'm sorry. It's just my character.

Q Well, that's fine. The question is this, he's holding these branches extending his arm out and holding them four to five feet off the ground depending on the height of the branch, right?

A Yes.

Q Okay. And you are cutting the first cut about 18 inches below his hand, correct?

A Yes.

Q That's the first cut, yes?

A Yes.

Q So that the branch that he's holding after you cut it is going to be about 18 inches long, right? The piece of wood that's in his hand after you make your first cut is going to be 18 inches long?

A No. No, he was placing the whole limb -- if I may, I know she can't record this. There's your limb off your tree. There's a pile of them. Stump down, that's where I cut it, the larger portion down to the ground. He would hold the smaller portion because on a pine tree they grow like this. If you don't know that, they grow upwards like that. So I

was cutting in the crotches of them. He was holding it, and I would stay away from him cutting off -- and I would not, like, cut towards the top, which is smaller, it's useless wood; we were just trying to get rid of the debris. So he would hold it and I would start cutting like this and put it over there. Off the pile --

Q I got you.

A -- another one --

Q I got you.

A -- stump down and hold it like that.

Q I got you. So he is not cutting -- The base of the branch that Paul's actually holding, you're not cutting that?

A No.

Q You're cutting the stems or limbs that come off of that horizontally?

A The sub limbs off the main limbs that were already removed.

Q Is that correct?

A Yes.

Q Okay. And the -- Although there might be limbs off of that branch all the way up to his hand, you're starting 18 inches below his hand just to stay

away from his hand, right?

A Yes. Yes.

Q Okay. So when you're done cutting that branch, there is still going to be some smaller limbs coming off of that branch at the top by his hand and that's okay, you can deal with it later?

A Correct.

Q Okay. So after you're done cutting horizontally all those horiz- -- Strike that.

After you're done cutting vertically all those horizontal limbs off of that branch, he puts the branch back and picks up another branch and you do that 25 to 30 times before Paul's injury?

A Yes.

Q Okay. The branch that Paul was holding when he was injured.

A Yes.

Q Describe how high or off the ground he was holding that.

A Five feet.

Q Okay. And was it a branch like all the other branches?

MR. CALLAHAN: Just object to form of the question.

BY THE WITNESS:

A By way of species?

Q No. Was it any different from any of the other 25 to 30 branches he had held previously?

A It may have been a smaller one that is by way of diameter that he chose to hold up.

Q This is what I'm asking. I'm not asking what you might -- what might have happened. I'm asking you, based upon you being there and I wasn't there, was the branch that Paul was holding when he was injured different in any way that you can tell that you recall than any of the 25 to 30 branches he had held previously without incident?

A None of the branches were exactly the same.

Q I understand that, but I --

A I don't know how to answer the question then.

Q Well, let --

A The --

Q Hold on. You answered it then. If you don't know how to answer it; you've answered it. So let me ask it a different way then. Other than every branch being a little different in size and thickness and amount of limbs off of it, is there anything unusual, anything necessarily different from that branch than

the other 25 to 30 branches?

A No.

Q Okay. And in appearance, the branch looked like any of the other 25 to 30 that you had cut just previously, correct?

A Yes.

Q Okay. And probably a similar number of -- a similar number of cuts off of this branch that Paul was holding when he was injured, you were going to have to make a similar number of cuts on that branch as to the other 25 to 30 branches you were cutting?

A Generally, yes.

Q Okay.

A Okay.

Q How many cuts were you able to make off of the branch that Paul was holding at the time of his injury before he got injured?

A Four.

Q Okay. So if I'm going to draw a picture of the branch, okay, and we're assuming that's a five foot branch and it has limbs going all off it up and down the branch, right? Right? Correct?

A (Nodding.)

Q Yes? I'm waiting for a word.

A I'm waiting to see what --

Q I'm not expecting you -- You don't have to follow my picture. I'm just saying if I'm --

A Well, I don't follow your description so I'm looking at the picture.

Q Okay. Well, I'm drawing a picture myself to --

A Okay.

Q -- demonstrate to you --

A I'll wait till you're done.

Q No, I can demonstrate it to you. I don't care. You can look at it.

This is a branch and then it has all these limbs coming off it in varying sizes, widths, and heights, okay? Fair enough?

A No, it's not the description of what was being cut. That's why I --

Q All right. You describe what was being cut then.

A The description of a pine branch or a limb is that it starts at a certain diameter, whether it be 3 inches or 2 inches, and over its length, which is also varying, it diminishes to just pine needles. About increments of every and varying also between

6 and 12 inches are branches again that from the larger diameter where it was cut from the tree begin to get lesser and lesser as you go towards the end of the branch.

Q Okay.

A There is a varying amount of how many branches are on there because no tree is exactly the same, so I was in conflict with what you were thinking --

Q Okay. Fair enough.

A -- it looked like.

Q So Paul's holding the branch at the top?

A Correct.

Q Okay. With his left hand?

A Yes.

Q What's he doing with his right hand?

A No.

Q Just to the side -- to the side of him?

A Just aside -- aside and away, yeah.

Q Okay.

A Standing away from it actually as you had physically shown it.

Q All right. What you're saying is he's extending his left arm out in front of him keeping his

body away --

A Yes.

Q -- his left arm above and holding the branch while his right arm is aside of him so the branch is standing vertically maybe three feet from his body; fair enough?

A Yes.

Q Okay. And then you start cutting these horizontal limbs off the branch at about 18 inches below his hand?

A Yes.

Q Okay. And do you remember how many cuts you had to make at a distance of about 18 inches from his hand before he was hurt? I'm not saying going further down, I'm just saying at the 18-inch mark where you were going to start the cuts.

A One.

Q Made one cut?

A One cut.

Q Okay. You got one cut?

A Very --

Q Hold on.

A I know that.

Q All right. Then you go down another distance

to make the second cut?

A To make another singular cut on a different branch, yeah.

Q How far down do you go?

A It varies with how -- how far apart they are on the branch. I would say between 6 -- 8 and 12 inches.

Q Listen, I don't want to guess so this is my question, okay? Hold on. Hold on. We know he's holding it at the top.

A Yeah.

Q We know it's about five feet, you said. We know your first cut is 18 inches from his hand, right? We know those things, right?

A Yes.

Q Okay. So my question is, based on what you've just told me now, how far down from the first cut that's 18 inches from his hand is the second cut on -- give me your estimate.

A I will give you an estimate of between 8 and 12 inches.

Q Okay. So that's the next limb is 8 to 12 inches, right?

A Yes.

Q All right. And then how far down is the next limb that you're cutting from that one you just cut, the second one?

A Again, 8 to 12 inches.

Q All right. And you're now on your fourth one. How far is the fourth one from the third one?

A There are branches on either side of that limb, which means I would cut this one, this one. This one, this one (indicating).

Q Okay.

A It looks like this.

Q I got you.

A Okay.

Q So what you're saying is, and I'm putting on my diagram on the same side -- hold on -- on the same side, but what you're saying is when you cut the first one, the second one is going to be on the other side?

A Yes.

Q Okay. That's fine. You can describe that. So the first one is on one side; you cut that 18 inches from his hand. The second one's on the other side; you cut that 8 to 12 inches below the first one?

A Yes.

Q The third one's on the same side as the first cut 8 to 12 inches below the second one, right?

A Yes.

Q And where's the fourth one? Same side as the second one?

A On the right side.

Q Over here?

A Staggered one, two, three, four.

Q Right. So it's the same side as the second cut then. If you have one, two, three, four --

A I wasn't methodically approaching each branch going left and right per se like, oh, I've got to start here or start there. It really mattered where he grabbed it and what was -- what was below his hand for me to start cutting and again --

Q Listen.

A And, again, the branches aren't aligned as you are drawing them. It's relative to me because --

Q Listen. The easiest process is for you to either say you know something or you don't know something, but you keep first leading --

A Sorry.

Q Hold on. Hold on. Hold on. You first lead me down here and then you just say well, I don't know

then. Tell me what you don't know and I'll move on, okay, but I'm going with what you're telling me. If you don't know something, you just say I don't know.

Let's start over. He's holding his left hand at the top of the branch. His first cut is about 18 inches below his hand, right?

A Yes.

Q On one side of that limb or branch?

A Yes.

Q Okay. So that limb is 18 inches down. You cut that limb off, that horizontal limb, and then you go down probably on the other side 8 to 12 inches and you cut the limb on the other side?

A No.

Q Okay. What? You tell me.

A On a pine tree they're grouped, that's what I was trying to show you, like this. They're not staggered all over the place. When they grow, it's a fan and they grow out like this. So it being stood up, I'd go one, two, three, four.

Q That's what I just did here but we can do it again. Let's try it again.

A Okay, but --

Q Hold on. This is what I'm trying to

understand and I'm trying to make it easy, but we can go through this. He's holding the branch up with his left hand and I'm trying to find out what distances you cut each of those four limbs until he's hurt, okay? I'm trying to find that out.

MR. CALLAHAN: Excuse me. It's just that there's a disconnect here.

MR. MAST: Well, that's why I have to ask these questions. We'll get there.

MR. CALLAHAN: I understand. I'm thinking he's thinking that on your branch this branch comes out like -- it'd be on a 45-degree angle up --

THE WITNESS: Yes.

MR. CALLAHAN: -- if I may. Then there's branches like this and this with the pine needles on them so he's cutting this one here, this one here, and this one here.

BY MR. MAST:

Q Are you making three cuts on one branch?

MR. CALLAHAN: Four cuts.

MR. MAST: No, I don't think that's what he's saying.

MR. CALLAHAN: I think that's --

BY THE WITNESS:

A I'm making one cut.

Q Here, let me do it. I think this is what --

A May I?

Q Hold on. Yeah, I'd be happy to. Let's probably do it that way. Make it easy.

A Thank you.

Q We'll save about a half an hour of questions.

A Right.

Q I was trying to get it described that way but it might be easier just to do it this way.

A Oh, I'm going to make it pretty. We've got time. I have time.

Q You want some crayons?

A I'm going to make a Christmas tree for you. That is a pine branch.

Q Okay. Now, let me ask the questions here. All right.

A I'm cutting it right here in the crotch.

Q I've got it. See, your answers aren't going to help unless they're after my questions.

A We'll get it all figured out.

Q All right. We're going to mark as Gagnon Exhibit 1 that pretty tree you just drew, okay?

A Thank you.

MR. BARCH: You'll have to call it a -- It's a single branch, not a whole tree.

THE WITNESS: Single branch.

MR. MAST: Okay. It's a branch. All right. I'm sorry. I'm not good at these things.

BY MR. MAST:

Q All right. That's a -- Obviously it's not to scale or anything, but it's just a drawing of a pine branch, right?

A Correct.

Q And it's supposed to represent, even though it's not exact, a typical type of pine branch that you and Paul were cutting on the day of his accident?

A Correct.

Q Okay. Different sizes, different amount of limbs coming off them but that's a representative of those types of branches, right?

A Yes, it is.

Q Okay. So if we look at this, the base is obviously going to be wider than the top of it, right?

A Yes.

Q So I'm going to put a T on your drawing where the top of that is and a B where the base is. Did I

just do that?

A Yes.

Q So we know what words to use?

A Yeah.

Q Okay. So I'm going to put T O P and B A S E. So we can refer so that we're using the same language. Paul is going to be holding with his left hand the top of the branch, right?

A Correct.

Q And then the base is going to be against the ground in a vertical fashion from where he's holding at the top, right?

A Yes.

Q And then starting 18 inches below his hand, you were going to start cutting on either side of that branch the horizontal limbs that are coming off that branch, right?

A Yes.

Q Okay. So if this were a branch that Paul was holding, his hand would be at the top and then you would make one cut -- oh, you'd start -- okay, you'd skip the top of it --

A Because it's --

Q Hold on. You'd skip the top limbs because

that's too close to his hand so you'd come down to maybe the next set 18 inches below and start making a cut there?

A Yes.

Q Then you'd go on the other side and make another cut?

A Yes.

Q That's two. Then you'd make another cut on there --

A Yes.

Q -- that's three. Then make another cut; that's four. Then cut there, five. Cut there, six. And you have the whole branch cut, right?

A Yes.

Q Okay. So let's number these one, two, three, four, five, six. Does that number what we just discussed?

A Yes.

Q So you're basically at least on this demonstrative drawing, you're making six separate cuts off of this branch and then you put the branch down on the ground and get a new one?

A Yes.

Q Okay. All right. That did clear up about a

half an hour, so thank you.

A You're welcome.

Q Okay. And I'm sure they weren't all six cuts every branch, right?

A No, they varied.

Q Is six pretty much an average or no?

A No.

Q As far as --

A There's no average.

Q Okay. There's maybe six, eight, ten, something like that?

A There's no average. There's no way to average it.

Q Okay. The branch that Paul was holding when he was injured was a branch like most other branches although in different sizes, correct?

A Yes.

Q Okay. And you're telling me you made four cuts until he was injured?

A Fourth cut he got injured.

Q Okay. On the fourth cut?

A On the fourth cut.

Q Fair enough. So if we just start with that one branch that Paul's holding and discuss what you

did up and to the time he was injured, you made the first vertical cut from the horizontal limb 18 inches below his hand, you made the second one on the other side just like you did on Exhibit 1 here, then you went down 8 to 12 inches lower, made the third cut on one side, then you're going to the other side to cut the fourth cut, right?

A Yes, correct.

Q What happens when you're going from the third cut to the fourth cut that you believe is what caused Paul to get injured?

A The fourth cut, not much unlike all the other ones, the branch bowed. It may have been because it wasn't rigid; it may have been weaker than the rest. I don't know.

Q Can I stop you for a minute just so I know what you mean by bowed. What do you mean, it was -- it was like limp?

A Yes.

Q Okay.

A Yes, not as rigid as the other one perhaps.

Q So when you say -- I don't want to jump too far. When you say bowed then, that means when you press the chain saw down, it kind of gives a little

bit more?

A Yes. Yes.

Q Okay. All right. So you're saying the fourth limb that you're going to cut, that limb is a little more weak, it gives a little bit more than the other three that you already cut?

A The main branch taken from the tree is what I'm talking about. I'm not talking about the branch I'm cutting off. As I approached the crotch, the main branch which I depicted on the drawing there gave way.

Q Okay. So if we -- Hold on. If we define then just so we know we're talking the same language, the branch is the solid continuous piece of wood that Paul's holding whereas the limbs are the parts that come off of that branch. Let's use those terms, okay?

A The limb is the larger piece; the branches are what come off the limb.

Q All right. I'm sorry. All right. We'll do it that way then. Let's define it that way.

MR. BARCH: Don't you watch that show on TV, those Ax Men?

MR. MAST: No. No. No, I don't.

BY MR. MAST:

Q So let's put that on the -- I'm going to

write that on here so we use these same words. Because I don't want to change the words so I put on Exhibit 1 here branch for the little parts that come off the main limb.

A Yes.

Q Fair enough?

A Yes.

Q That's what we're going to describe?

A Yes.

Q All right. So what you're talking about is so we use the same terminology, the limb is what Paul's holding with his hand that goes vertically from his hand to the ground?

A Correct.

Q And the branches are the things you're cutting off of that limb six to eight or so cuts, right?

A Yes.

Q Okay. So what you're saying is after you cut three of the branches off of the limb Paul's holding, the fourth branch -- What happens with the fourth branch?

A The limb had flexed slightly causing the chain saw to come out of the crotch.

Q Okay.

A At that time, without moving away from that instance, I approached the cut again. Simultaneously Paul wanting to help me went to support it with his right hand and at that same time I went through the cut and I nicked his arm.

Q Okay. Okay. Now, when you're saying Paul went to -- what did you say? -- support it?

A Yes, support it.

Q What was he -- Do you know what he was going to do with his right hand?

A I'll tell you what he did with his right hand. He actually grabbed the limb and supported it.

Q What part of the limb?

A Below the next cut that I was -- the last cut that I made when it flexed and just below the one that I'm talking about and followed through.

Q All right.

A The fourth cut.

Q So let's talk numbers.

A The fourth cut.

Q You just made the third cut.

A Yes.

Q And the fourth cut was still the same

distance from the top of the limb --

A Yes.

Q -- but it was on the other side --

A Yes.

Q -- of the third cut, right?

A Yes.

Q And had you cut the fourth branch by the time Paul was injured?

A No.

Q Okay. So the fourth branch was still there?

A Yes.

Q But you were attempting to cut it, right?

A Yes.

Q And when Paul was holding with his left hand the limb, it kind of flexed because it's held up against the ground?

A Yes.

Q And it kind of bowed a little bit and you're saying Paul then with his right arm did what?

A Went to support it below that cut as I went to finish the cut.

Q Okay. So when you cut his arm, Paul's arm, was his right arm on any part of that limb or branch?

A Yes.

Q What part?

A Below the fourth cut which did not go all the way through.

Q Okay.

A He would have been like this (indicating).

Q All right. Hold on. So you just demonstrated that his left arm was up, his right arm was down on this limb, right?

A Correct.

Q So when you -- when he had his right arm on the limb and his left arm on the limb together, his right arm was below the fourth branch that you were going to cut, right?

A Yes.

Q How far below?

A Maybe 8 inches. His hand was collapsed onto the limb about 8 inches below that last cut that didn't go through.

Q Fair enough. Okay. And when you made that first attempt to cut that fourth branch, was his hand there at that time or was that after you tried to make that first attempt?

A It was after I made the first attempt at the fourth cut.

Q Okay. You made the first attempt at the fourth cut and because the limb bowed, you were not able to penetrate the fourth branch, correct?

A Correct.

Q So did you just in a split second go back and try it again or did you wait a couple seconds or what happened? How long was the process?

A Like microseconds. It was -- You know, it's a matter of just going -- and at the speed you can see -- I'll describe if I need to or if you want me to -- cut, cut and also the manner in which I'm cutting, it's called the locked elbow position. You don't just freewheel a saw. Nip, nip, nip, and it went ... I was like okay. And at that same time he just reached over to kind of help me out so it wouldn't flex and that's how it all came together.

Q All right. Well, if he's reaching over and that's why you cut him, then that leads me to believe that he's not holding on to the limb at the time that you cut him.

A Oh, he's holding on to the limb.

Q So is he reaching over at the time you cut him or is he already holding on to the limb?

A Simultaneously as he reached down to that

limb standing like this flexed like that. At the same time I went to finish the cut and I did finish the cut. Like I said, it just --

Q All right.

A Just --

Q Hold on. You're going way too fast for us and we're going to have to repeat the questions over and over again and if we can just go step by step, okay?

A Okay.

Q As he -- As you make the first attempt at cutting that fourth branch, the tree flexes and your saw blade bounces up or do you --

A Slightly bounces up, yes.

Q Okay. Then do you immediately put it back down to cut it a second time to try to cut it a second time or do you wait? Do you hesitate?

A I didn't hesitate.

Q So you immediately did it then, right?

A Say it again. No, just the last part.

Q I know. I get it. Your first attempt to cut the fourth branch to the second attempt to cut the fourth branch there was no hesitation, it was just tried to go down and get it, it bent and then you went

back down to get it and you cut it off?

A Yeah.

Q And that's -- When you went back down to get it that second time, that fourth branch, that's when you cut his arm?

A That's when he placed his hand there and got it cut.

Q Right.

A Yes.

Q Okay. So when he was cut -- physically when the cut occurred, was his right hand on the limb or not?

A Yes, it was on the limb.

Q Did you know it was on the limb?

A Yes, I did. It was clasping the limb.

Q Okay. How long was his right hand clasping the limb below the forth branch that you were going to cut before you cut his arm?

A It's hard to operate a stopwatch while you're operating a chain saw. I really can't give you a time frame as to something that happened so quickly and when two men come together. Like I said, I can't -- I can't answer that question. I don't know. I don't know.

Q Listen, you gave me five minutes of why you don't know. Just tell me you don't know, that's fine. We can move on.

A I'm sorry. It's my character. I'm very inclusive in my answer descriptive.

Q All right. Well, I'm just trying to tell you you don't need to do that.

A And I'm working on it right now.

Q All right.

A I'm glad you --

Q So the question is, and I'm not saying is it five minutes between the time you first tried to cut it until the second time you cut it. I understand we're talking seconds, okay. My question is --

A Milliseconds.

Q All right. Milliseconds. Fine. My question is, when you went down to cut that fourth branch the first time and the tree bent --

A Yes.

Q -- and you had to go down right away and cut it a second time, when you went toward that fourth branch to cut it a second time, when you went toward it, was his right arm on the limb at that time or was he off it and going toward it to hold on to it?

A At the exact same time that my saw went through that fourth cut, his hand clasped that limb.

Q That's not my question. My question is this; I'm going to say it again. My question is, you went down to cut that fourth branch off and the limb bowed so you went at it again; and my question is, when you went at it again for that second cut on that fourth branch, was his right hand clasping below that fourth branch at that point?

A In time?

Q Yeah.

A Simultaneously.

Q Okay. So that simultaneously you're saying when you're going after that fourth branch the second time --

A Yeah.

Q -- he's now at the same time grasping on below that fourth branch to hold on to the limb?

A Yes.

Q Okay. And do you see him as he is moving his right arm toward the limb to hold on to it or do you just see at the last second when your saw is going towards the branch?

A I was focused on the branch and the cut. I

wasn't looking at him.

Q So your answer is you didn't see his hand moving toward the --

A No, I did not see his hand.

Q You've got to let me finish the question.

A I'm sorry.

Q We're going to be here all day. Your answer is you did not see his hand motioning toward the limb -- his right hand motioning toward the limb to hold on to it, you only saw it right when it clasped the limb right when you were going at the branch a second time?

A Yes.

Q So the time -- Simultaneously when you're cutting that fourth branch, that's when you go through that branch and then you end up going into his arm, correct, his forearm?

MR. CALLAHAN: I'd just object to the form of the question.

BY THE WITNESS:

A You're leading me into cutting him and that's not what happened.

Q Oh, I'm sorry.

A I feel as though I am.

Q I get what you're saying. I'm sorry, maybe that wasn't the way you wanted me to word it. I'll try to word it differently.

A Thank you.

Q You're -- At least from what you're saying is, you are motioning toward that fourth branch a second time in attempts to cut it so you're moving the chain saw, as you said, in that rigid locked position with your elbow --

A Yes.

Q -- toward that fourth branch to cut it, right?

A Yes.

Q So if you're going toward that fourth branch to cut it, and I understand you're saying his right arm is locking on to that limb at the same time, right? Right?

A Yes.

Q But you're moving the chain saw forward to cut that branch, right?

A Yes.

Q So when you're moving that chain saw forward to cut that branch, that moving forward manner ends up striking his forearm in the manner that it did to cut

him, right?

A I think we're overlooking the word simultaneous. I'm sorry that I can't just answer your question but it's -- the description is --

Q What do you mean?

A The description is not fitting the instance that happened for me per se.

Q Put his arm movement aside for a minute.

A Okay.

Q Okay?

A All right.

Q We know simultaneously he's using his right arm to grab on to that limb while you're making that second cut to the fourth branch, right?

A Yes.

Q That's happening simultaneously; I understand that.

A Yes. Okay.

Q My question is, while you were going down to that second cut of that fourth branch, you're moving the chain saw forward to cut that branch, right?

A Yes.

Q And in the process of moving the chain saw forward to cut that fourth branch, that is the process

that takes your saw blade into his arm. Whether his arm is moving or not, we can -- I can ask that next, but the process of you moving forward with the chain saw is part of what led to his arm being cut, right?

MR. BARCH: I'm going to object to the form of the question. It's also argumentative. Go ahead.

BY MR. MAST:

Q Go ahead.

MR. CALLAHAN: I'll join that objection.

BY THE WITNESS:

A As you had said, it's part of how it happened.

Q Right.

A It's an equal share.

Q Okay. Equal share meaning you're saying his arm's moving near the limb as well as the chain saw you are operating is pushing forward toward that limb and the arm and the chain saw meet and he becomes injured, correct?

A Correct.

Q Okay.

(A short break was had.)

BY MR. MAST:

Q All right. Finish up where we got this tree

now. So you're holding the chain saw, you're going for that second attempt at the fourth branch to cut it, and while you are cutting that fourth branch is when the -- when Paul's arm is struck; is that right?

A Yes.

Q And so the chain saw is under your control at the time, right?

A Yes.

Q You're not out of control, are you?

A I'm in control with the chain saw, yes.

Q Okay. And you're wanting to cut it when this happens, right? You're wanting to cut with it when it happens?

A Yes.

Q Okay. You are attempting to cut the branch and that's when Paul's arm is attempting to hold on to the limb, right?

A Correct.

Q And the chain saw is in motion when Paul's arm is struck, correct?

A Yes.

Q Okay. And the first time you see Paul's arm is when his right hand is grasping the base of the limb below the fourth branch, correct?

A Yes.

Q You don't see it coming from the side toward that bottom part of the --

A No.

Q -- of the -- of the limb, correct?

A No, I did not, correct.

Q Is that correct?

A (Nodding.)

Q Okay. Is that correct?

A That is correct.

Q Okay. Okay. When he gets cut, what is the first thing that happens? Does he scream? Do you say something? What's the first thing that happens the split second he's cut?

A I say no. He says yes.

Q And what do you mean by no? You mean no, that's not happening or what?

A Yeah, like no. No, it didn't happen.

Q Okay. And he says what?

A Yes. Let's go.

Q Yes what?

A Let's go.

Q Let's go what?

A Let's get out of here. It's time to go.

We've got to go to the hospital, you know. Yes, let's go.

Q That's the first thing that happens once he's cut, right?

A Yes.

Q And when he gets cut, are you able to see the chain saw making contact with his arm, or how do you first discover he's cut?

A It just looked like I could have nipped him. It was so close that it looked like I could have touched him.

Q Okay.

A That's what I did, I touched him.

Q All right. Had Paul ever held a limb before he got cut with both hands before this?

A No.

Q Okay. So you did not expect him to do that?

A No, I did not.

Q Okay. And after you say no and he says yes, do you guys -- do you basically put the chain saw down and get in his car and go to the hospital?

A I threw the chain saw down and got in his car to go to the hospital.

Q Was he bleeding?

A Yes.

Q Do you know -- and, again, I don't knows are fine answers. I'm not trying to imply you know things but I just have to ask. Do you know how far or how deep the chain saw went into his arm?

A I could tell you pretty accurately. I was there in the operating room. It never went past the epidermis.

Q What do you mean, the skin?

A Yeah.

Q Did it open the skin?

A Yes.

Q And it was bleeding?

A Yes.

Q Okay. Well, I mean, the doctors will be able to tell us how deep it went. Are you telling me you have some kind of medical ability to tell how far it got cut?

A I'm educated to a certain extent and I was educated there in the emergency room and I heard everything that was being said and I was shown and even Paul said look, and I was right there the whole time looking.

Q You don't have any medical education or

ex- --

A No, I don't.

Q Wait. Back and forth here, please, please. You don't have any medical education or training, do you?

A No.

Q Okay. So any type of depth of incision or cut that you would be talking about would be just based upon what you saw visually, correct?

A It was visual, yes.

Q You never went with your finger inside the wound?

A No.

Q Or any type of object?

A No measuring devices were employed, no.

Q Okay. Did you hear the doctors talk about how far it was cut in?

A Yes.

Q How far did they say?

A Not deep, that was their assessment.

Q Okay.

A He was lucky.

Q Okay.

A It only hit the fascia; that's what they

said.

Q All right. Do you know -- You've known Paul a long time before the accident?

A 35 years.

Q Okay. Have you ever known him to be injured in any way before this accident?

A Yes.

Q Okay. What is that?

A A car accident.

Q When was that?

A I cannot put a pin date on it, but I can say it was over seven years ago.

Q Okay. So maybe around 2006, somewhere around there?

A I am guessing at that, but I know that there was an instant which he was involved in an accident and he also pursued.

Q Okay. Here, listen. Just follow me. If you follow me, we'll go where we need to go and get there fast, okay?

A As I said, it's a struggle because of my character.

Q All right.

A I'm descriptive and inclusive.

Q Fair enough.

A You don't have to keep correcting me -- or you do have to correct me; that's your job, but --

Q Fair enough.

A -- I'll try to get there for you, okay?

Q All right. Motor vehicle accident about 2006. Were you in the accident with him?

A No.

Q Do you know what injuries he suffered in that auto accident?

A Nerve damage to the left elbow that was allegedly struck.

Q In this case you mean?

A In that other -- Yeah.

Q Did he ever have any surgery for that left elbow?

A I know he was poked and prodded. I don't know if he was -- had actual open surgery for it though.

Q Did he ever resolve that injury up until the accident in this case?

A I don't know.

Q Okay. Other than a left elbow nerve injury in a motor vehicle accident around 2006, any other

injuries from that motor vehicle accident?

A I don't know.

Q Okay. How do you know about that left elbow nerve injury then?

A Because he showed people and talked about it openly.

Q Was it a different location than where he was lacerated or cut in the chain saw in this case?

A Yes, it was an entirely different arm.

Q Oh, I'm sorry. You're right. I'm sorry. I wasn't thinking that far ahead. Good. In this case -- In this case the chain saw was the right arm. In that case it was the left elbow, right?

A Yes.

Q Okay. Any other injuries other than the motor vehicle accident?

A I'm not aware of.

Q Okay. Any other prior -- prior to this case, any prior injuries to Paul?

A Not that I'm aware of.

Q Any prior conditions of ill health with Paul before his chain saw accident?

A I'm not aware of any.

Q In the four or five year let's say -- Strike

that.

In the five years before this chain saw accident in June of 2011, was Paul in any way disabled or limited in what he could do physically?

A I don't know.

Q Okay. Well, to what extent you do know -- to what extent your contact you've had with him, you're not aware of any; fair enough?

A Correct.

Q Okay. Are you aware that Paul was under any medical consultation or treatment in the five years prior to Paul's chain saw accident in this case?

A I am not aware.

Q Okay. After this accident are you aware of Paul receiving medical treatment from time to time for his right arm laceration?

A Yes.

Q How many times -- Let's say in the month after this chain saw accident, how many times did you see Paul? I mean, was it every day?

A No. No. Maybe three or four times since this accident I've seen him.

Q Total?

A Yeah.

Q Up until now?

A Yeah.

Q Oh, I see. So it's been very infrequent then?

A Yes.

Q Okay.

A Just the instances where we exchanged what I had given in the beginning of this deposition.

Q Right.

A Those are the only times I spoke to him.

Q All right. So let me summarize that just to make sure we're clear. What you're saying is, I'm assuming before the accident you saw Paul a lot, right, or not?

A I wouldn't even say frequency. From time to time.

Q Maybe once every couple of weeks or something?

A Yeah, that's honest. That's fair.

Q All right. So let me word that all out then. Before the accident you were seeing Paul every couple of weeks maybe infrequently; fair enough?

A Infrequently, okay, yes.

Q Fair enough?

A Yes.

Q After the accident you saw Paul only on those occasions where you had words with him that you described at the beginning of the deposition?

A Correct.

Q And that would have been, looks like, four times?

A Yeah.

Q Right?

A Yeah.

Q Okay.

A With the exception of the one time when he did come up to help me work, but we didn't discuss anything that had to do with the case; he just came up to work.

Q When was that? Was that a different time?

A It was after the accident. He helped me do a roof on my house.

Q So it's different than the four times we talked about at the beginning of the deposition?

A Yeah, we were talking about conversation and this wasn't really conversation. It was -- we were just working.

Q Okay. So that's why I'm trying to get this

summarized.

A Okay.

Q After the accident we talked about four different times you had a conversation with Paul about various things. We talked about those, we tried to give approximate dates and things.

A Yes.

Q Okay. Other than those four conversations with Paul, you said there was one other time you had -- you were with Paul after his accident and that was to do a roof?

A My roof at my home, yeah.

Q Okay. When was that?

A It would be October.

Q Of what year?

A 2011.

Q Same year as the accident?

A Yes. Yeah.

Q All right. So you did -- Was he helping you do roofing work on your house?

A He was helping me tear it off.

Q Okay. Did he have any kind of bandage or brace on his right arm from the injury in this case?

A No.

Q How many days was he helping you?
A Just one.
Q For how many hours?
A Five, six hours.
Q Okay. So you're saying after the accident in October of 2011, we're talking maybe about four months after the accident, Paul helped you on one day five to six hours to pull your old roof up off your house?
A Yes.
Q Okay. Was anybody else helping you --
A Yes.
Q -- during that time?
Who?
A Mike Shoshie, neighborhood friend.
Q How do you spell that?
A S H O S H I E.
Q Is he still a neighborhood friend?
A Yes, he is.
Q Where does he live?
A Two blocks away from me. I can't give you his address; I don't retain it in my memory, but I know where he lives. I could submit that to you at a later time if you'd like.
Q Very good.

MR. BARCH: I need to at least go on record that we started around 1:00. There's been some breaks, it's now 3:45. If Mr. Gagnon's attorney is going to stick to the three-hour limit, I need some time.

MR. MAST: I'll try to wrap it up.

MR. BARCH: I know, but I don't want to get to the three-hour point and have the plug pulled. There's only 15 to 20 minutes left.

MR. MAST: Well, I guess that's -- that's -- I mean, we didn't -- Hold on.

MR. BARCH: Well, I think you and I have a duty to share our time.

MR. MAST: Before the dep we didn't really discuss this so it's fair that you bring that up. I don't know if you have a lot, but I'm trying to wrap it up now with me. I don't think I'm going to take the full -- I don't think I'm going to be a half an hour from now. I don't know how much time you have so is it -- do you have a lot of time or are you just looking at 10, 15 minutes?

MR. BARCH: Yeah.

MR. MAST: Yeah, so we should be fine.

MR. CALLAHAN: Yeah, during the break Mr. Mast and I discussed this. We're told the deposition

started at 1:12. He said he'd wrap it up so you should have time.

MR. MAST: Yeah.

MR. BARCH: Okay. Good. I just want to make sure we're all on the same page, that's all.

MR. CALLAHAN: If you go a little over, I'm not going to jump up and scream.

BY MR. MAST:

Q Anyone other than Mike Shoshie, you and Paul that was assisting on your roof at the time Paul was helping you?

A No one else was assisting but there were witnesses that seen him helping in those duties.

Q That was my next question by the way. Who was that?

A Joe Vlk.

Q How do you spell the last name?

A V L K. No vowels.

Q Where does he live?

A In the neighborhood by me also.

Q Anybody else?

A My wife.

Q Okay. And are you aware of him having any difficulties in helping you during those five or

six hours because of his injury in this case?

A He seemed to not exert himself fully and was, if not nursing, staying away from using that arm in full but nonetheless was still grappling and moving.

Q Fair enough. So you're allowing the fact that he was reserving some of his -- saving himself a little bit for the right side where he hurt his arm in this chain saw accident as if there was something still lingering there?

A Yes.

Q Okay. But he still was able to help you for five or six hours irrespective of what might be his ongoing issue?

A Yes.

Q Okay. So other than those five to six hours that given day in October 2011, you had four other meetings and conversations with Paul that we already fully talked about and there's no more need to detail those anymore; fair enough?

A Correct.

Q Okay. And the first conversation was coming right out of the hospital that day of the accident, right?

A Yes.

Q The next one was four months later, the other one was 2012 and the last one wasn't about any financial thing but it was a little bit before the 2012 meeting; fair enough?

A Yes.

Q Okay. Have you now told me everything that you had -- Well, strike that.

Let me ask this question first. Did you and Paul at any time discuss how or why the accident occurred?

A No.

Q Okay. And that's on both sides. You never told Paul, Hey, why were you holding on to the branch, or, I didn't know you were doing that, or, Why were you grabbing with your right arm? You never told that to Paul, did you?

A No.

Q And Paul never said, Hey, why were you cutting the way you did, or anything like that; he wasn't complaining to you?

A No.

Q Okay. Have you talked to anybody else other than your attorney and your insurance company about what happened?

A No. My mother. Just back to my mother.

Q Oh, and you might have -- You know what? This isn't a big deal, but I think in terms of just being all-inclusive, you did -- I printed out what my assistant wrote down from a recorded statement that you knew I was taking over the phone of you, correct?

A Yes.

Q Did you read this at all?

A That one I -- Yeah.

Q Huh?

A Yeah.

Q This is the narrative from the recorded statement that she took down and I'm assuming she took it down right. I didn't go and read it and listen to it.

A Yeah, I had a few blanks in there and such that, you know ...

Q Well, hold on. The question is --

A Yeah.

Q And I'll mark this as Exhibit 2, okay, and I'll just put a 2 for now. But would you agree that -- and I know you didn't listen to the recording so I understand that, but would you agree that reading this narrative marked as Exhibit 2 accurately states

what you would have said on that phone call to me?

MR. CALLAHAN: I'd just object to the form of the question and as to the number of variables with the recording and with the transcription of the process itself, including some of the language in the transcript and ask him if he could -- I think it's better if this would be pointed out page by page or -- excuse me -- line by line more or less if he's agreeing with that.

MR. MAST: I can do that. Yeah. Joe, I'm just trying to make it easy.

MR. CALLAHAN: Yeah.

BY MR. MAST:

Q Let me put it this way: Have you read this narrative from your recorded statement?

A Yes.

Q Is there anything in the narrative -- and I'll let you read it again if you need to, is there anything in this narrative, Exhibit 2, that you believe you did not say that's attributed to you?

MR. BARCH: Form of the question, but go ahead.

BY MR. MAST:

Q Here, I'll give it to you again. Just read it through. I don't want to go through line by line

unless you want to but basically I'm asking you, did you say those words and is this --

A This besides the blanks that are there --

Q Yeah, besides the blanks.

A -- yeah.

Q Okay. All right.

MR. CALLAHAN: And I'd just point out too that there seems to be -- like if you read that thing in total, there are eight parts where the subject and verb don't agree, there's parts where it goes on, it doesn't make sense and that also has to be considered as well as to the totality of the accuracy and the candor of the statement.

BY MR. MAST:

Q Okay. This is my question, and again I know you didn't compare the audio to that statement; but you read that statement and all I'm asking is, you generally recall giving me a statement over the phone, right?

A Yes, I do.

Q And does that generally, and again we can listen to it to find out specifically what it says; but does that generally meet with your recollection of what you said?

A Yes.

Q Okay. And that's Exhibit 2, correct?

A Yes.

Q All right. Again, it is what it is. Let's put Exhibit 2 on here so we can keep track of these things. Okay.

Now --

MR. MAST: Oh, I didn't put this on the record. I'd like to put this on the record. I don't have answers today of interrogatories, nor I don't think this response is to my production request. Let me just see. No, this response to the production request is to codefendants' response. So I don't have that discovery, nor answers to interrogatories to my discovery. I'm assuming nothing is going to be crazy or different than what went over today but to the extent it does, I'm going to reserve my right to the extent I need to, but let's just mark this as Exhibit 3.

BY MR. MAST:

Q And what Exhibit 3 is, is what I was given today right before the deposition are, Mr. Gagnon, your answers to codefendants' interrogatories and response to production request. Nothing that you need

to concern yourself to other than I will ask you Exhibit 3, is this your signed answers to interrogatories that you're giving in this case?

A Yes, I received this in the mail and answered those questions as they are printed.

Q And you signed it verifying these are your true and correct answers, correct?

A Yes.

MR. BARCH: Do you have a signed version? I don't have a signed one.

MR. MAST: Yeah, it's signed.

BY MR. MAST:

Q All right. Has -- I think defense counsel already answered this, but I just want to make sure that you haven't heard anything that your defense counsel hasn't heard -- has your homeowners insurance rejected or reserved their right for coverage in this case at all, to your knowledge?

MR. CALLAHAN: I'd just object, it may call for privileged conversation and I object as to it may call for conversations with insurance company but -- and I can answer as far as I know, there's been no rejection of anything, and I'll make that stipulation --

MR. MAST: I'll accept your answer then; that's

fine. All right. Let me just look through your answers to interrogatories, the ones that I've got. Hold on one minute.

BY MR. MAST:

Q Have you talked to your mother -- Or strike that.

Have you talked to your parents at all about this incident with regard to whether they saw anything?

A No.

Q Okay. Do you know if they saw anything regarding the incident?

A I know they didn't see how it went down.

Q Did they -- Do you know if they saw the process of what you and Paul were doing in cutting these branches down?

A No.

Q Okay. Do you know if they knew about the incident before you left the property that day?

A Yeah, they knew that something had happened --

Q Okay.

A -- bad.

Q Okay. Since you only met or spoke with Paul

on a few various occasions after the incident, I'm assuming you're not really up-to-date on the nature and extent of his recovery and/or his medical injury; fair enough?

A No, I'm not.

Q Is that fair enough?

A That's fair.

Q Okay. So what limitations or the severity of the injury and what it's turned out to be, you don't know about; fair enough?

A I don't know.

Q Okay. And the work you were doing was at the request of your parents, correct?

A It was at the submitting of my parents for my suggestion that it was a good time to do this.

Q It was for purposes of your parents. It was their property and it was --

A Yes.

Q -- work doing --

A It was for purposes of my --

Q Hold on.

A Okay.

Q It was for their purpose, your parents' purpose to do it. You weren't benefiting yourself in

doing it, were you, other than getting money for it?

MR. BARCH: I object to the form of that question. It calls for legal opinions.

MR. MAST: I don't --

BY MR. MAST:

Q Go ahead. Do you want me to ask the question again?

A Yeah.

Q All right. The work you were doing in cutting the tree on your parents' property when this injury occurred was to benefit your parents, correct?

A Yes.

MR. BARCH: Same objection.

BY MR. MAST:

Q Okay. And you were getting paid to do it, correct?

A Yes.

Q Okay.

MR. MAST: Go ahead. I'll let you go and see if I have anything else here.

EXAMINATION

BY MR. BARCH:

Q Hopefully don't have to cover everything over again, but I do want to back up a little bit. Mike McArdle?

A Mike Mcartor.

Q Mcartor?

A Yeah, Mcartor.

Q He was a friend of yours for a long time as well?

A Yes.

Q And what's the connection between him and Mr. Dulberg? I mean ...

A They both live together in Paul's mother's home.

Q They've been living together for years?

A Ten years.

Q Ten years?

And it's a sensitive question, but are they a couple?

A A lot of people wonder.

Q Okay. Well, do you know?

A I don't know.

Q You've known them both for years.

A I don't know. I mean, I don't know either way so I just don't know. I'm not being facetious; I just don't know.

Q Have you ever talked to Mr. Mcartor about what happened?

A No.

Q No?

A No.

Q They -- There was one conversation --

(Short interruption.)

BY MR. BARCH:

Q There was one conversation I think you had with Mr. Dulberg and Mr. Mcartor was present?

A Yes.

Q And let me see if I can remember which one that was. Do you remember of the four that we talked about earlier --

A Yes, it's the one in the kitchen where Mike was present and Paul had commented that he thought that this was a blessing and the best thing that could have happened because he won't have to work another day of his life. Won't have to retrain for a job, blah-blah-blah, on and on.

Q Okay. Do you recall Mr. Mcartor making any

statements?

A No. No, Mike is a listener.

Q Okay.

A He stays out of things.

Q And I may be confused but was that the same conversation where he -- where you basically said you wouldn't tell something that wasn't true?

A No, that was a separate conversation. I was leaving his house and he kind of just blurted out across the kitchen where Mike was witness to him saying it.

Q The one that Mike was there, there wasn't any discussion about money or --

A No.

Q -- testifying any certain way?

A No.

Q Okay. All right. I guess going back to this whole situation, what brought you out to your -- I guess to this -- to do this work at your mom and dad's place. That's your mom, right?

A Yes.

Q Carolyn is your mom, and Bill's been your stepfather for years?

A For years, yeah.

Q And you were there -- If I understand what you're saying, you were there, there was a discussion as to what to do with these trees now that the shed was down?

A Correct.

Q And it was just a -- if I heard your testimony, a good opportunity to take down these overhanging trees?

A Yes.

Q Was there plans to put up a new shed?

A No. Actually, we installed the same size shed on the same platform in the same spot after the trees came down.

Q Okay.

A As I said, it was opportune because it was absent now.

Q Okay. But was there -- the long-range plan was to put a new shed back in the same spot?

A Yes.

Q A replacement?

A Yes.

Q All right. So before doing that, it was -- your thought is let's get rid of this overhanging tree?

A Yes.

Q All right. And I -- I -- This whole notion as to whether you were paid or not paid, did they end up giving you cash for doing work out there?

A I did a multitude of things; but yes, for that job --

Q Okay.

A -- there was many upgrades done on the property, so ...

Q Did you consider yourself to be their employee or were you just doing a favor for them for money, what?

A No, I was -- I was doing a favor and because of the times, I was getting money where I could and my mom wanted to supply me with some kind of means of income because I couldn't find it anywhere else and I provided a service for her.

Q You called it at one point a chore --

A A chore.

Q -- that you were doing for them?

A Yeah.

Q All right. Now, with respect to the tree trimming and then ultimately whether they were removed, did either Bill or Carolyn come out there and

tell you how they wanted this done?

A No.

Q Prior to you undertaking that job, did you sit down with them and have them tell you what they wanted done, what their expectations were, or anything like that?

A No.

Q Have you ever actually seen either one of them use a chain saw?

A No.

Q Would you agree that you were free to cut those limbs, take down the branches, to do that in any way you saw fit?

A Yes.

Q And you didn't have an invoice or a written contract with them --

A No.

Q -- or anything like that?

A No.

Q And then this whole concept as to whether David was there -- I'm sorry -- as to why Paul was there, he was there -- you invited him over?

A I did.

Q And Mr. and Mrs. McGuire may have known he

was coming over?

A Yes.

Q You told them that?

A Yes.

Q Did you tell them that he was coming over to help you?

A I said that I asked Paul to help me today and they didn't say anything because we worked together before and they're friends, so ...

Q And at that point, if I heard your testimony, there was no discussion between you and your parents about them paying for Paul's time?

A No.

Q And that wasn't something that you and Paul even talked about?

A No.

Q Even up until the point of injury, that was not a subject of conversation?

A No, it was not.

Q Do you know if he was planning on taking some of the trimmed-up branches for firewood?

A I was assuming in my mind that that would suffice him initially, yes, because he had already taken some before from the front yard. He has a

fireplace at his home that he burns --

Q Okay.

A -- where we don't -- or she doesn't here.

Q That was an assumption but was it actually a subject of conversation between you and he?

A No, we did not discuss it.

Q So in terms of what, if anything, Paul might get out of it, as you sit here today, you don't recall any discussions with Paul about what he would get in return for helping you?

A No, he just agreed to help a friend take down some trees.

Q And I -- if I'm understanding your testimony too, Paul wasn't trying to override anything you were doing; he wasn't telling you what to do either?

A No.

Q There was a lot of unspoken things happen between the two of you?

A Yes.

Q The branch that you and Mr. Dulberg were working on -- I'm sorry -- the limb that you and he were working on, that one you mentioned as you were cutting that fourth branch as turning, that one flexed?

A Yes.

Q And you used the word flexed, at one point also bowed, you used that word?

A Yes.

Q If I'm understanding what you're saying, the actual limb itself bent?

A Yes.

Q All right. Did you have that happen on any of the other 24 to 29 branches that you were cutting?

A No.

Q That was the first time that happened?

A Yes.

Q All right. And the -- at the point in time you described, and I don't want to go through in detail what you and Mr. Mast just went over, but you described how you were moving for that -- at the second attempt to get that fourth branch; and if I understood your testimony, simultaneously Mr. Gagnon is coming in with his right arm to grab the limb --

A Mr. Dulberg, yes.

Q -- and the saw and his arm converged simultaneously?

A Yes.

Q Okay. Had Mr. Dulberg gotten his hand

anywhere near the chain saw any closer than 12 to 18 inches anytime prior to that?

A No.

Q At any point in time did you perceive or fear that he was getting his arm too close or hand or whatever, any part of his body too close to the blade of the chain saw that you were operating?

A No. No.

Q Right up until the very end?

A No.

Q Did you ex- -- As you were cutting, having down 24 to 29 branches, because this happened you're estimating on the twenty-fifth or thirtieth branch, correct?

A Yeah, somewhere around there.

Q Limb. Did you expect him to be putting his arm in there to help with the flex?

A No, because none of them flexed previous to that. I didn't foresee it at all.

Q All right. And would you agree that prior to June 28, 2011, indeed right up until the point where Mr. -- where the saw came in contact with Mr. Dulberg's arm, you knew that a chain saw could cut somebody?

A Yes.

Q You didn't have to be told that --

A No.

Q -- by anybody else?

A Did not have to be told that.

Q And would you also agree that you knew that it would be important if you were using a chain saw to keep it clear of somebody else's arm and hands and body for that matter?

A Yes.

Q You didn't have to be told that by anybody?

A No.

Q And you talked about a certain position you took with the chain saw, you called it a lock --

A Locked elbow.

Q Locked elbow?

A Yeah.

Q Is that where one hand's on there -- there's like a bar that you can hold the chain saw with?

A Yes.

Q Then there's another part where there's a trigger?

A Yes.

Q You actually have to pull the trigger to get

the chain to move?

A Yes.

Q And which elbow are you talking about being locked, both of them?

A Right elbow locked into my ribs so that my strokes were short.

Q Okay. So that was some -- that was a technique that you were using to maintain control over that chain saw?

A Yes.

Q Is that something that you learned just in practice or something you heard before?

A No, I witnessed people doing it when they're in close quarters because sometimes you'll have to do that. You know, I have a friend who does tree trimming and I'd just seen it performed before.

Q Okay.

A It's also less fatiguing on the worker.

Q And it may be elementary but correct me if I'm wrong, you were -- as you were using the saw to cut those branches off the limbs, part of what you were doing is removing these limbs, correct?

A Yes.

Q The branches from the limbs?

A Yeah.

Q And part of what you're doing is trying to not hurt yourself --

A Correct.

Q -- in the process?

A Yeah.

Q Were you also endeavoring to not hurt Mr. Dulberg?

A Yes. I had no intentions of hurting anyone.

Q At any point in time prior -- right up until the point where the chain blade came into contact with Mr. Dulberg's arm, did you feel there was a -- did you feel compelled or was there anything causing you to feel compelled to tell him to keep his hands or arms out of the way?

A No, they were not in the way.

Q He was doing that all the way up until that point in time?

A Yes.

Q And if I heard you, you don't know all the injuries -- the extent of any injuries or complications Mr. Dulberg had as a result of that car accident that he had?

A Nerve damage is all I was aware of.

Q Okay. Whether he broke his neck or had any residuals with the elbow, rehab or surgeries, none of that you don't know?

A Yeah, I don't know.

MR. BARCH: All right. That's all I have.

MR. CALLAHAN: I just have one -- two quick questions that you may want to have some follow-up on if I can just go?

MR. MAST: Okay.

EXAMINATION

BY MR. CALLAHAN:

Q Mr. Gagnon, are you aware of any other work that Mr. Dulberg has done in addition to helping you tear off a roof after the date of the incident?

A He tends a garden which is his whole front yard this summer, the last summer. He did some -- He did some renovation and tear-out work for a -- kind of strange you asked that, but a homosexual that lives in Twin Lakes and he just freely gave up, he's like, Yeah, I met your friend Paul.

You know, he helped me tear out the dry wall in my basement and stuff and then I was like, oh, really? And I asked him if he would testify and he said, I don't want to get involved. So maybe he'd

want to get involved now, I don't know, but that was the one example; and then of course on my home, my roofing.

Q So he did some demolition work for some other people?

A Yeah.

Q And that was referred to in your statement that you gave Mr. Mast before this deposition?

A Yes.

MR. CALLAHAN: Okay. That's all I have.

MR. MAST: Yeah, I want to follow up on that.

FURTHER EXAMINATION

BY MR. MAST:

Q He tends a garden. Do you ever watch him tend the garden?

A I've seen him tend to his garden.

Q Since the accident?

A Physically walking in his garden and picking vegetables, yeah. I mean, as far as tilling and that, no, I have not seen him labor as far as tilling, although he did borrow my tiller to till it.

Did I see -- Did I see him? No.

Q Okay. Have you ever seen him till his garden?

A No.

Q The only thing you've seen him do since his accident as far as his garden is to pick vegetables?

A Yeah.

Q Okay. And that's just by when you drive by you see him doing that?

A He's -- He told me at those times when I was there, you know, look at all the produce I have.

Q He told you when? What are we talking about?

A When I was there.

Q After the accident?

A Yeah. On those -- On those occasions that I mentioned, he's got all his, you know, vegetables and stuff lined up at his house.

Q You're going too fast. On what occasions? These conversations we talked about at the beginning of this deposition weren't all at his house.

A No, the one where I was in the kitchen.

Q Right. That's the one time. You said --

A Such as -- Such as that, you know, and --

Q Wait. Wait.

A His brother doesn't tend the garden.

Q Hold on. Hold on. Stop. After the accident how many times have you been to his house?

A As I had said.

Q How many?

A As I had said.

Q What is as I had said? What answer -- How many is that?

A You've got it written down right there.

Q How many? I don't know what you're talking about. How many?

A I told you the one time in the kitchen.

Q Right.

A And there you go.

Q So one time?

A Yeah.

Q Okay. Just say one then; that's the answer. So the question is, how many times have you been to Paul's house since his accident? It's one time, right?

A Yeah.

Q Is that a yes?

A Yes.

Q Okay. So the times that you've seen anything that he's done with his garden, have you ever visited him to see what he does in the garden?

A No, I didn't witness him working in the

garden.

Q Okay. So what you're saying is the testimony you just gave about him tending the garden is what you have had that one conversation when you were at his house that one time after the accident, right?

A Yeah.

Q And that was a conversation you had with him and he said, Hey, look at what I do when I tend my garden?

A Yeah. I was figuring maybe the dog helped him, you know.

Q You know, I'm not trying to be funny. I'm just trying to get the facts, okay? Because what you say might -- you might not understand but it leaves a lot of inferences. I'm trying to finish -- find out exactly what you mean as far as so I don't have to infer what you mean, okay?

A Okay.

Q So I'm not trying to be funny about it. You were there at his house one time after the accident, right?

A Yes.

Q And that was the time four months after the accident?

A Yes.

Q Okay. And that's the information then that you got about him tending his garden, correct?

A Yes.

Q Okay. You've never seen him tend his garden since the accident, have you?

A Picking fruit, tending? Yeah. I mean, are you talking about tilling soil? Are you talking about walking in the garden in the sense --

Q Have you seen --

A What are you saying is tending?

Q All right.

A I don't understand.

Q Okay. I understand that.

A Okay.

Q How many times have you seen him in his garden since the accident?

A We'll say ten times driving by his house, going into the neighborhood that I used to live in, no conversations, not stopping by, not talking to him.

Q I got the answer, ten times.

A But I'd usually seen him in his garden.

Q During those ten times you've seen him in his garden since the accident, what things have you seen

him do?

A Harvesting vegetables.

Q Picking vegetables?

A Yes.

Q Okay. With his hands?

A Yes.

Q Putting them in some type of basket or something?

A Yes.

Q Okay. And you would see him just by passing by so it'd be a matter of a couple seconds you would see him, right?

A Yes.

Q For each of those ten times, right?

A Yes.

Q And those are ten separate dates?

A Yes.

Q Over a course of a summer?

A Over the course of since this occurrence.

Q Okay. So that would be two summers?

A So two summers, right.

Q Okay. Very good. Let's talk about that renovation work then. The renovation work that you're talking about isn't something you saw him do, it's

something that somebody else told you that he has done, right?

A Yes.

Q And who is the individual, what's his name?

A Mike Thomas.

Q Mike Thomas?

A Yeah.

Q He's the homosexual you were talking about?

A Yes.

Q And he lives in where?

A He lives in Twin Lakes.

Q Okay. Are you friends with him?

A No.

Q Okay. So you don't know personally what Paul did, if anything, at Mike Thomas's house, you just know what Mike Thomas told you, correct?

A Correct.

Q Okay. So whether he actually did renovation work, meaning Paul, you don't know; fair enough?

A His basement was renovated.

Q Whether Paul did the work or not, you don't know; fair enough?

A I was told that he did the work.

Q Right, and so now I'm asking do you know if

Paul did the work or just through what you were told?

A I was informed that Paul had done the work inadvertently without asking for me to be revealed that someone -- someone had told me that I know this person.

Q All right. Here, let me say it a different way.

A I know, you're trying to work it your way.

Q I'm not trying to work -- I'm just trying to get the basis of what you're saying and you didn't see him do the work, right?

A No, I didn't see him do the work.

Q So you don't know if he really did the work, do you, other than what somebody told you, correct?

A That's a fair assumption.

Q And Mike is the only person that told you he did the renovation work, right?

A That is correct.

Q And what part of the renovation work you don't know; fair enough?

A That's a fair assumption.

Q Okay.

MR. MAST: That's all I have. Thanks.

FURTHER EXAMINATION

BY MR. CALLAHAN:

Q I hate to do this but one more question. Have you seen Mr. -- In the time you've seen Mr. Dulberg after the accident, have you seen him working on his computer?

A I've seen him working on his computer, yes.

Q All right. And he seems to be able to use both hands on the computer?

A He's always on his computer, yeah.

Q Okay.

A That's what he does.

MR. CALLAHAN: That's all I have. Thank you.

MR. MAST: Now I've got to ask you that. All right.

FURTHER EXAMINATION

BY MR. MAST:

Q How many times have you been to Paul's house since the accident, just that one time?

A Yes.

Q Is that the only time you've seen him operate his computer after the accident?

A That was the time that I've seen him, yeah.

Q Okay. Fair enough.

MR. MAST: All right.

MR. CALLAHAN: Signature reserved.

(Witness excused.)

STATE OF ILLINOIS)
) SS.
COUNTY OF McHENRY)

IN THE CIRCUIT COURT FOR THE TWENTY-SECOND JUDICIAL CIRCUIT
McHENRY COUNTY, ILLINOIS

PAUL DULBERG,

Plaintiff,

vs.) No. 12 LA 178

DAVID GAGNON, Individually, and as Agent of CAROLINE McGUIRE and BILL McGUIRE; and CAROLINE McGUIRE and BILL McGUIRE, Individually,

Defendants.

I, DAVID A. GAGNON, state that I have read the foregoing transcript of the testimony given by me at my deposition on February 4, 2013, and that said transcript constitutes a true and correct record of the testimony given by me at the said deposition except as I have so indicated on the errata sheets provided herein.

_____
DAVID A. GAGNON

No corrections (Please initial)_____
Number of errata sheets submitted_____(pgs.)

SUBSCRIBED AND SWORN to
before me this _____ day
of _____, 2013.

_____
NOTARY PUBLIC

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Margaret Maggie Orton, Certified Shorthand Reporter and Registered Professional Reporter, do hereby certify that on February 4, 2013, the deposition of the witness, DAVID A. GAGNON, called by the Plaintiff, was taken before me, reported stenographically, and was thereafter reduced to typewriting under my direction.

The said deposition was taken at the offices of Thomas J. Popovich, 3421 West Elm Street, McHenry, Illinois; and there were present counsel as previously set forth.

The said witness, DAVID A. GAGNON, was first duly sworn to tell the truth, the whole truth, and nothing but the truth, and was then examined upon oral interrogatories.

I further certify that the foregoing is a true, accurate, and complete record of the questions asked of and answers made by the said witness, DAVID A. GAGNON, at the time and place hereinabove referred to.

The signature of the witness, DAVID A. GAGNON, was reserved by agreement of counsel.

The undersigned is not interested in the within case, nor of kin or counsel to any of the parties.

Witness my official signature on this 9th day of December, 2013.

MARGARET MAGGIE ORTON, CSR, RPR

CSR No. 084-004046

MEMORANDUM

TO: File

FROM: Hans

DATE: February 6, 2013

SUBJECT: **DISCOVERY DEPOSITION OF DEFENDANT, DAVID GAGNON**

CASE: PAUL DULBERG

On February 4, 2013, I appeared for the discovery deposition of Defendant, David Gagnon taken before court reporter, Margaret Maggie Orton at Urbanski Reporting, 312/977-1777. The transcript was not ordered at the time, but we will call and have it ordered soon.

David Gagnon is kind of an unusual fellow. He is a very free spirit and talkative to the extent that he has difficulty remaining on point and many times his answers will flow into new issues and topics without much hesitation. He does come across somewhat likeable, however, but is an unusual sort and may come across at trial as somewhat defensive in his testimony. He testified to the following favorable and unfavorable points:

FAVORABLE TESTIMONY:

1. He agrees that as he was attempting to move forward with the chainsaw towards the limb to cut it, he struck Paul's right forearm causing him injury.

2. He admits that Paul was holding the branch with his left arm and reaching to hold the branch with his right arm when Paul's arm was struck by the chainsaw.

3. Paul had no pre-accident history of any problems with his right forearm.

4. He has not really been in contact with Paul much since the accident and doesn't know the nature and extent of his injury other than he does know that Paul has had some difficulty with his right arm since the accident.

UNFAVORABLE TESTIMONY:

1. He has spoke to Paul on several occasions after the accident during which Paul has indicated that "he might not have to work anymore" and "this lawsuit might be a great event in his life" and that he would share $10,000 if he ends up settling for $100,000 with David Gagnon - although Dave admits that Paul never conditioned Dave's testimony on any recovery or payment.

2. He believes Paul was reaching for the branch so that he could hold on to the lower end of the branch and keep it steady while Dave was cutting the limbs from the branch. However, Paul never grabbed onto the branch with his right before and this was something unknown to him

and he did not realize Paul was going to do this until just before Paul was cut with the chainsaw.

David Gagnon lives with his wife, Pamela at 39010 90th Place, Genoa, WI 53128. They have been married since 2008. Both he and Pam are longtime friends of Paul Dulberg. He has known Paul his whole life practically.

He explained that there were three particular conversations he had with Paul since Paul's accident in which Paul commented in a very questionable nature on the accident and how that might help him financially:

1. First, on the day of the accident after they left the hospital together and before they left the parking lot, Paul indicated to him that "we could make a lot of money at this."

2. For months after the accident, he was at Paul's house visiting along with Paul's roommate, Michael Mcartor when Paul mentioned that "this could be the best thing that happened to me because he will not have to work the rest of his life." This is the only visit he had at Paul's house since the accident.

3. Paul visited David at his home in 2012 after the suit was filed and Paul told him that "he would share $10,000 of any money he gets if gets at least $100,000 if it goes well for him." Dave responded that "what do you want me to say, that he was weelding the chainsaw and was negligent." Dave then said that he would not do that. Paul said "that would make it easier."

These three conversations are the only conversations he has had with Paul since the accident in any substantial sense and although he is not sure what Paul meant or implied with these statements, he felt that he was wanting Dave to say things favorable to his case to help him settle the case. Dave refused. However, Dave agreed that Paul never conditioned Dave's testimony on anything Dave said, although he did say it would "make it easier."

Dave graduated from high school in Johnsburg in 1985. Since then he started some college courses but never finished a college degree, but instead has been working most of his life since high school self-employed doing auto repair and body work. He does it at his home.

As for his use for chainsaws, he began using them probably around 1985, mostly on camping trips to cut up wood. In 2000 to 2004, he owned two different chainsaws but only one worked. He would use it from time to time to cut things in the yard. In 2004, he maybe used the chainsaw about 15 times until Paul's accident in June 2011. Most were on camping trips. Other than on camping trips, he would have used his friend, Mike's chainsaw on one occasion, another time was on a camping trip, another time would have been on his own property using a friend's chainsaw and the last time was just before the accident at his parent's house helping to cut up some wood. He recalls earlier in 2011, his parent's bought a brand new chainsaw and they were going to use it to cut down some wood in the backyard. He is not sure who they intended to use the chainsaw until he was asked two days before beginning work at his parent's house in June 2011, if he would help cut a couple pine trees down.

His parents are Carolyn and William McGuire. Carolyn is his natural mother, William is his step-father. His natural father died in 1996. His mother has been living at the same house since 1971. The address is 1016 W. Elder, McHenry, IL. It is on a one-third acre and it's a ranch house. There are only about 10 trees on the property. Before Paul's accident there were 13. Two of them were pine trees. He recalls a couple days before Paul's accident he spoke with his mother and father about removing a couple pine trees so that they can install a new shed. The older shed had come down because it was old. The parents agreed to pay him $15 an hour for the work. Two days later he began the work on his own at his parent's property. He cut down several limbs from the two pine trees. The next day he went over to Paul's house in the morning to see if Paul wanted to help him for getting paid about $15 an hour as well. They never talked about money but that was what he was implying, Paul would get paid as much as he is getting paid from his parents. He did not intend Paul to ever use the chainsaw on the day of the accident. He is not real sure what he expected Paul to do to help him other than to help stack the wood and clean up the tree debrie. They never really discussed what Paul's work would do but Dave always planned on being the only one to use the chainsaw.

The two pine trees were in the backyard and they were about 50 feet tall a piece. They had a lot of branches on them. There were many limbs coming out from the base of the pine tree. It was over 25 years old. The process of cutting up the trees were as follows:

> They would take a large limb maybe 4 to 5 feet tall and Paul would hold it in front of him vertically with his left hand out from his body and his right hand on his side. Dave would then begin 18" below Paul's left hand and start cutting on the sides of the branch all of the limbs off of the branch. The limbs were coming off horizontally from the vertical branch. He would cut off all of the horizontal limbs beginning 18" below Paul's hand. He did say that Paul is the one that chose to hold up the limbs or branches, it was not his decision. His decision was to use the two sawhorses and lay the branches over the sawhorses so that he could cut them down. (But that would be a lot more difficult because you would have to keep on picking up pieces as you cut the tree limbs from the sawhorses). Anyway, for about 25 to 30 different branches, Paul would hold them up with his left hand in front of him vertically and Dave would cut the limbs off of these branches. On the last one, Dave described that he cut about 4 limbs off the vertical branch Paul was holding and on the fourth one as he went down to cut the branch the branch bent a bit and gave way and he could not cut the limb cleanly, so he went down to cut the limb again at the same time as Paul was using his right arm and bringing it around to hold on to the branch to keep it steady. As Dave was going in with the chainsaw to cut this fourth limb from the branch the chainsaw struck Paul's right forearm. Immediately, they knew that he had to be taken to the hospital. Paul said let's go. Dave got in Paul's car and drove Paul to the hospital and they went in and got treated. Dave implied that it was not "a deep cut." But he has no medical expertise. Then when they got out of the hospital Paul said what Dave described earlier in this memo about "Paul saying that he could make a lot of money at this." He didn't really keep in touch with Paul much since the accident. Once suit was filed he became very angry at Paul because of some of the things that Paul was saying about "financially benefitting" from the claim.

As to his parents, his said that parents had no expertise in using a chainsaw and were not outside when the accident occurred. His parents were not directing on how he was to do the work, but he was to do the work on his own and in his own way. When I asked him questions about him directing Paul's work he said that he never directed Paul to do anything and that they had worked together on

other days and he just thought that they were working together and would work on their own to get the work done.

Subject: Re: Certified mail
Date: Thursday, March 12, 2015 at 10:36:25 AM Central Daylight Time
From: Hans Mast
To: Paul Dulberg

I have done nothing to lose your respect. I have gone far above what you would get from any other attorney you just don't realize it or appreciate it. Instead you continue to focus on issues that have nothing to do with your case. You don't listen to my advice. Which is fine. You don't have to listen to my advice. But 9 out of 10 times you will lose this case for trial. As I told you before that is why the defense is never going to offer the policy limits. To settle the case you will need to take far less than the limits. But you don't have to you definitely can go to trial. That is your personal choice. In my view your case is not worth the limits given the issues we've already discussed. So I have done what I can do for you.

We have I think $3000 in costs that we will be paid no matter who is handling Case. We have worked on the case for years without pay....but if it will allow you to find another attorney we will consider waiving Our fee unless your eventual recovery exceeds $100,000.

Sent from my iPhone

> On Mar 12, 2015, at 10:19 AM, Paul Dulberg <pdulberg@comcast.net> wrote:
> Hans,
> I have found several attorneys and none are willing to represent me as long as you hold the lean on this case and apparently it is not legal for me to finance their representation by other means.
> Respect for your thoughts does not constitute a breakdown in communications.
> Respect is earned through truth, hard work and results.
> I am asking for an honest brief to go before the judge. That is all.
> Earn my respect and you will receive the best recommendation I have ever given anyone.
> Paul
> Paul Dulberg
> 847-497-4250
> Sent from my iPad
>> On Mar 12, 2015, at 10:06 AM, Hans Mast <hansmast@att.net> wrote:
>> Paul I will be happy to deal with any attorney considering your case directly regarding my lien. But not until they call me to talk. As is clear with your email and many others you do not respect my thoughts and/or knowledge about these cases and there is no point in continuing any further in dealing with an unsatisfied client.
>> Find an attorney and I will talk to them about the lien.
>> Sent from my iPhone
>>> On Mar 12, 2015, at 9:12 AM, Paul Dulberg <pdulberg@comcast.net> wrote:
>>> Hi Hans,
>>> Received your certified mail requesting to be released from my case due to a breakdown in communication between you and I.
>>> I ask that you not follow through with this action unless you are willing to also sign off on your lean against my case. As I have no chance in hell of getting another attorney willing to take this case on without your lean being freed from this case.
>>> Bottom line... No attorney I have spoken with is willing to trust that you will pay them from your lean.
>>> Please withdraw your motion as there has been no breakdowns in communications between you and I.
>>> The only breakdown was a very poorly written brief you asked me to look over in which the only truthful substance in it was the names and dates. Oh and the fact that you did manage to put the chainsaw in the correct persons hands.
>>> I hope to be able to review your revised copy of this brief again soon.
>>> Best wishes and Thank you,
>>> Paul
>>> I ask that if

I ask that it

Paul Dulberg
847-497-4250
Sent from my iPad