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Also present: Lindsay Fulmer  
Videographer, ProVideo

1 setting, or maybe in an auto parts store. That's how  
2 interests play in. They are very important. You want  
3 somebody to go in a direction that they're going to enjoy,  
4 but they're a lot of times very hard to get.

5 Q Did you form any opinions with regard to Mr. Dunn and his  
6 situation as a result of your work on this case?

7 A Yes.

8 Q What are your opinions on a more probable than not basis?

9 A Well, he'd functioned as a steelworker for a long time. I  
10 think, from a physical perspective, it's unlikely that  
11 that's going to happen in the future. I think everyone  
12 agrees to that. Steelwork is one of the heavier jobs out of  
13 all the heavier jobs out there.

14 As he sits right now, there's not a lot available to  
15 him in terms of jobs. He's probably going to be --  
16 utilizing the medical information in here, he's medically  
17 unstable, so we don't know, once his treatment is finished  
18 and he becomes stabilized, what he's going to be able to do  
19 physically.

20 I think it's reasonable to assume he will either be  
21 capable of sedentary or sedentary and light employment. He  
22 wouldn't be able to do more physically-oriented jobs.

23 Q Let me stop you for a minute.

24 Can you explain for the jury what "sedentary" or  
25 "sedentary light employment" means?

1 A Sure. The U.S. Department of Labor is the categorization  
2 system that we utilize in our field. And they have defined  
3 levels of employment by physical exertion required, so it  
4 goes sedentary, light, medium, heavy, very heavy.

5 And most trades jobs are in the medium class of  
6 employment, truck drivers, carpenters, that sort of thing.  
7 He won't be able to do that.

8 "Light employment" is defined as lifting 20 pounds on  
9 an occasional basis. "Sedentary employment" is defined as  
10 lifting 10 pounds on an occasional basis, so there's not a  
11 lot of difference in terms of lifting.

12 The primary difference is that sedentary employment is  
13 doing what I'm doing here; you're sitting down most of the  
14 day. Light employment requires you to be on your feet and  
15 move around. For instance, retail is classified as light  
16 employment. Secretarial is classified as sedentary.  
17 Obviously that's --

18 So that's the difference in the two. That's kind of  
19 where he's going to end up. And I think the -- exactly  
20 where he's going to end up between sedentary and light, I  
21 think, is undetermined at this time.

22 Q Go ahead with your opinion.

23 A He's going to be relegated to sedentary and light  
24 employment. I don't see a lot available to him now in terms  
25 of employment options, particularly that will pay him much

1 money.

2 I believe that what he should do is obtain some  
3 additional skills by completing education. We discussed the  
4 test results. The test results would indicate he possesses  
5 the capacity to be successful in post-high school endeavors.

6 I think you can also look at his work and  
7 educational background. He graduated from Enumclaw High  
8 School in '80, I believe. And he was a 2.5 student which  
9 isn't grand, but it's not terrible.

10 I think the positives are that, when he took the test  
11 and interviewing for the union job, he was ahead of  
12 everyone. He was number one on the list. That shows you  
13 he's probably pretty smart to get there. People liked him  
14 in the interview. That's part of getting there.

15 He worked -- it appears to me from his work history  
16 that he worked for a short period of time just after his  
17 apprenticeship, became a steady hand with one company, was  
18 there a long time, became a steady hand with another  
19 company. That's important; somebody likes him. He must  
20 have been doing a good job.

21 And then for the last five years, he was working in a  
22 supervisory-superintendent sort of capacity as a working  
23 job. But that's what he was doing. So he was obviously  
24 good at what he did. And I think what that tells you about  
25 him from an education and employment perspective is, he's a

1 good employee, and he's a probably pretty savvy and a pretty  
2 capable fellow. That jives with the test data, so we know  
3 the education looks okay.

4 He has considered taking course work to become a  
5 construction management type person. I would suggest to him  
6 that he needs to take a close look at the physical  
7 requirements of that. There's a lot of field work for most  
8 of the jobs, so he's going to have to drive a lot and be  
9 walking the construction sites, and that may be something  
10 that may or may not be good for him physically in the long  
11 run.

12 I think that, if I were counseling him, my suggestion  
13 is to take a look at more of the employment -- excuse me --  
14 more of the educational alternatives available to him.  
15 Construction management makes you a construction manager.  
16 To become an engineer, you're an engineer. If he was -- I  
17 always suggest to people that they consider a degree in  
18 business or something related to that, because business  
19 degrees are applicable to a lot of jobs. They're applicable  
20 in the banking industry as the loan officers, things like  
21 that, human resources, sales, purchasing, entry level  
22 management positions. There's a lot of jobs, and those jobs  
23 go across industries. They can be in manufacturing, Boeing  
24 Aircraft. You can be in the airplane industry in terms of  
25 Alaska Airlines. You could work for retail.

1           So there are educational directions that would provide  
2 more breadth to what would be available to him. I think  
3 it's his choice. He can do either, but that's my suggestion  
4 to him in terms of the long-term for his education and his  
5 employment.

6 Q With regard to Mr. Dunn's physical condition and the  
7 education, do you have an opinion as to how much education  
8 he would need to provide him opportunities to earn an income  
9 eventually that is at or similar to what he was earning when  
10 he was injured?

11 A Sure.

12 Q What is that?

13 A Well, most likely he will require some remedial work.

14           First of all, I would suggest that he start at a  
15 community college. If he's in Buckley, Bramer is probably  
16 the closest. I would suggest that he start at a community  
17 college. He could take an asset test at the community  
18 college, and that says before you take 100 level college  
19 level course work, you need to take math 095. I don't know  
20 where he'll score in there. He'll likely need some remedial  
21 work.

22           While he takes his remedial work, I would suggest he  
23 take some preparatory work. That would be like computer  
24 use, study techniques, how to study, maybe what to do with  
25 my life, whatever he thinks is appropriate, a couple three

1 terms to get him prepared; and then to take a curriculum at  
2 a community college for a couple of years, and to finish up  
3 maybe at the University of Washington, or they have a Tacoma  
4 branch of the UW. He's closer to that, something along  
5 those lines.

6 I think probably five years to obtain a bachelor's  
7 degree, if you put it all together, would probably be about  
8 right.

9 Q Do you believe that an associate's degree would give him  
10 sufficient education to pursue other types of careers  
11 besides an ironworker?

12 A Oh, sure. I mean he could. There's some very good  
13 programs, for instance, at Clover Park in drafting and  
14 engineering tech. He could do a two-year credential.

15 There are basically two areas, my areas, Owings' areas,  
16 that would be available to him at the community college,  
17 like the bookkeeping, administrative, clerical sort of  
18 things, and the other area would be the technically-oriented  
19 stuff like engineering techs, electronic technicians.  
20 There's drafters. There's some printing industry things.  
21 There's computer network training programs. Those are  
22 two-year programs.

23 Q And even with a two-year program, is it your opinion that he  
24 would need to take some remedial courses first?

25 A Probably so, yes, probably the same drill, probably three

1 years to get a two-year degree.

2 Q Do you know the cost of going through a two-year program  
3 with the remedial courses approximately?

4 A I can't include the remedial courses. The remedial courses  
5 are at no charge. I don't know what the preparatory courses  
6 would cost.

7 The cost estimates for the community college I was  
8 looking at yesterday were \$63.05 an hour, per credit hour.  
9 But roughly if you look at the two-year program, it's about  
10 just under \$3,000 a year for books and tuition to go to a  
11 community college, so you're looking at a bit under \$6,000  
12 for two years of education.

13 Q And you also mentioned something about him getting a  
14 bachelor's degree or a four-year degree?

15 A Yes.

16 Q And if he were to pursue a four-year degree, what would the  
17 additional cost be approximately?

18 A Tuition costs, this one is fresh off the press. We received  
19 it yesterday. For the University of Washington currently,  
20 \$4,968 per year, and they estimate book costs at \$822 per  
21 year.

22 By the way, the documents I'm using are the Washington  
23 Occupational Information System, and they're compiled and  
24 published by the state.

25 Q Those are documents you rely on in your assessments?

1 A Yes, sir.

2 Q And I take it that other vocational rehabilitation  
3 counselors also rely on the same documents.

4 A I think pretty much everyone utilizes them, yes.

5 Q With the two-year degree, you mentioned drafting and  
6 clerical type work.

7 A Right.

8 Q And do you have an estimate as to what his entry level  
9 income would be in either of those areas?

10 A Sure. I'm dealing with the numbers all the time.

11 If you look at -- let's just do entry level and  
12 experienced together.

13 Q Sure.

14 A If we look at the clerical bookkeeping administrative field,  
15 the entry salary tends to run in the high teens, probably  
16 \$17,000 or \$18,000 a year, and experienced workers make  
17 someplace right at \$30,000, maybe a little bit less than  
18 that per year.

19 The technically-oriented jobs such as engineering  
20 technicians and drafters, their entry wage is about \$25,000  
21 a year. And experienced employees in the technical-related  
22 jobs pay \$40,000, and they could be as high as \$45,000, sort  
23 of right in that range.

24 Q With a four-year degree -- first of all, if Mr. Dunn were to  
25 pursue a four-year degree, what areas would you recommend

1 that he consider for obtaining his degree?

2 A A four-year degree?

3 Q Yes.

4 A I would pretty consistently talk about the business area  
5 because of the way that I described earlier. It's really a  
6 very broadly applicable degree. That's why.

7 It also happens to be sort of mid-range in terms of  
8 entry level earnings. You'll find that the social service  
9 jobs pay less, but the engineers and computer people, they  
10 make more at entry. So in terms of -- we're working here  
11 today in litigation, sort of splitting and putting it in the  
12 middle.

13 Q With Mr. Dunn's work background, coupled with a degree in  
14 business, what would you expect in terms of career fields  
15 for him?

16 A I think that's his choice. I mean obviously, he could work  
17 in the construction industry. It depends on what he would  
18 want to do. He knows steel. I mean possibly something with  
19 steel, or there's manufacturing, and there's people that  
20 transport steel. There's -- you've got quite a number of  
21 manufacturing places around here, so he could do that.

22 He could do something totally new. He could go into  
23 whatever direction. He might chose -- he might do something  
24 like a management trainee position or something, just go  
25 into something totally new, if he wants to do generic

1 things, maybe purchasing, maybe human resources.

2 I noticed in one of his interest inventories,  
3 interestingly enough, that accounting was a high thing for  
4 him, so he could be an accountant someplace. I mean, think  
5 where an accountant can go. They can work about anywhere.

6 Q Can you give the jury one or two examples of jobs with  
7 incomes so that there's an idea of what he would make at the  
8 beginning after getting a four-year degree, and what he  
9 might make after experience?

10 A Sure. I use information from the National Association of  
11 Colleges and Employers for entry level salaries. And it's a  
12 national base.

13 But I think that we're a reasonably high-priced living  
14 area. And you'll find that the business graduates are  
15 making right around \$40,000. There's \$40,647. September of  
16 2003 is \$40,747 for accounting graduates, 14,042 of them.  
17 And economics and finance graduates including the banking  
18 industry were \$49,438. It shows 1,600 people there.  
19 Business administration was \$36,000, marketing and marketing  
20 management is only \$34,000.

21 If you go over to construction, if he chooses to do  
22 that, construction management starts at \$42,289.

23 So I think if you say someplace around \$40,000 for  
24 entry, that's what he would get. For starting salaries,  
25 that's what he would make. Pardon me.

1           In regard to experienced workers, if you look in the  
2 business field and you look at accountants, I use a survey  
3 that is for positions in Eastern Idaho, Washington and  
4 Oregon, so it's geographic. You'll find that human  
5 resources, accounting, salespeople make a lot of money. But  
6 purchasing and those sorts of jobs that I've been talking  
7 about, they pay in the \$60,000 to \$70,000 range, probably  
8 about \$65,000 on average, something like that.

9           And interestingly enough, using the state's data for  
10 construction managers, the average range indicated for  
11 basically Seattle north to Snohomish and Island Counties is  
12 about \$67,000. I think if you look at an entry level wage  
13 of \$40,000, and if he's an average worker with a wage in the  
14 \$65,000 to \$70,000 range, you're probably in pretty good  
15 shape.

16           But for instance, the range for construction managers  
17 goes to the high end of the average range. It depends how  
18 it falls in there.

19 Q   How long would it take Mr. Dunn to get from the entry level  
20 wage to the average wage in any of the fields you've  
21 discussed?

22 A   Probably five to eight years. When you look at the  
23 documents and the wage levels, they cite how much experience  
24 you need. For the professional stuff you need, the  
25 business-related things, it's probably five to eight years.

1 Q In terms of getting from the entry level to the average  
2 income, would that be something that would occur readily  
3 over time?

4 A Sure. I mean you have a pay scale that starts here and  
5 steps up, in other words, steps up to the top of your pay  
6 scale, and then you're stuck with cost of living unless you  
7 change jobs.

8 Q Now, do the salaries that you've been talking about include  
9 benefits, or would benefits be in addition to the salary?

10 A In addition. That's the base salary only.

11 Q With regard to the other vocational rehabilitation reports  
12 that you've reviewed from counselors that have apparently  
13 dealt with Mr. Dunn, do you agree or disagree with their  
14 opinions?

15 A I'm not sure what you mean by "their opinions".

16 Q For example, there was a report that was done by a Merrill  
17 Cohn.

18 A Right.

19 Q Did you have a chance to review that?

20 A I looked at it briefly this morning.

21 Q And did you agree or disagree with Ms. Cohn's opinions or  
22 conclusions regarding Mr. Dunn's vocational rehabilitation  
23 assessment?

24 A First, I'm not quite sure she has opinions.

25 Basically what she says is that he medically can't

1 work. Well, we're not qualified to talk about his physical  
2 capacity from a medical perspective. We would ask a  
3 physician or medical service provider about that. So I'm  
4 not sure she really offers an opinion relevant to whether he  
5 can work or not.

6 The one thing she does say is he retained no earning  
7 capacity whatsoever. I would agree with her at the present  
8 time. But her report does not address what might occur in  
9 the future.

10 I mean Dr. Herring, in his deposition, indicated that  
11 he needs either surgery and a pain clinic or a pain clinic,  
12 and he thinks eventually that he will be employed in some  
13 capacity.

14 As a rehab counselor working with him, that's what I  
15 would work towards, is trying to say where should you think  
16 about going so we're headed that way now, so that when your  
17 medical improves, we'll be on our way.

18 The psychological issues and his trouble coping with  
19 this has been really, really difficult, and it's been  
20 because he could have used better guidance from his  
21 rehabilitation counselors in helping him plan. And that's  
22 my job is to try to pull people out of the quagmire. I call  
23 it the light at the end of the tunnel.

24 So that's why we say about this, Merrill Cohn is right;  
25 he retains no wage-earning capacity now, I don't think,

1 because he's so medically compromised, and he's  
2 psychologically compromised. So once he has things out in  
3 front of him and starts to move forward and his  
4 psychological issues improve, his physical function should  
5 improve; how much we don't know.

6 But if he's physically capable of -- going to be  
7 physically capable of being employed in the future, I think,  
8 with the appropriate preparation, that he will be able to  
9 work, and he will make money, so we'll just have to see how  
10 the medical comes out.

11 Q Based on your assessment, is there any medical -- let me  
12 back up.

13 Based on your assessment, is there any reason that  
14 Mr. Dunn couldn't begin pursuing an education at this point?

15 A I don't think so. It would have been nice to talk to him  
16 and see; if you talked to him and he says, you know  
17 physically I just can't hack it, I believe him, I'm not  
18 going to doubt him.

19 I would try to encourage him, no matter how bad the  
20 physical is, to go ahead and get started, even if it's just  
21 a little bit, even if it's just a course, because that  
22 movement is what helps. If he happens to be depressed,  
23 that's how to alleviate the depression. It provides a  
24 direction. That's what he needs. So probably I would  
25 approach it from that perspective.

1 But I don't know because I'm not that close to him.

2 MR. NOVASKY: Thank you, Mr. Owings. I  
3 don't have any further questions.

4 MR. SHAFFER: Let me get a couple of  
5 objections on the record real quick.

6 We just received notice of this videotape deposition  
7 within the last five days, so we objected to the videotaping  
8 of it pursuant to Rule 30 which requires longer notice.

9 Does anybody want to take a break?

10 THE WITNESS: I'm okay. Thanks. I'll  
11 have some more water. Thank you.

12 MR. SHAFFER: I'm ready to begin.

13

14

15

EXAMINATION

16 BY MR. SHAFFER:

17 Q Mr. Owings, you testified that, because of his injury,  
18 Mr. Dunn's employment choices are very limited, correct?

19 A Yes, sir.

20 Q That's a permanent condition that he's going to face because  
21 of his injuries?

22 MR. NOVASKY: Objection, calls for  
23 speculation.

24 A I believe so.

25 Q (By Mr. Shaffer) You commented that his work history showed

1 that he must have been a very good employee with Corona  
2 Steel and with the prior employer. Is that correct?

3 A Yes.

4 Q And I think you commented earlier that he was -- he felt  
5 like he was on top of the world in his industry. Is that  
6 right?

7 A I was maybe misquoting him a little bit. That's what he  
8 said in his deposition, I believe.

9 Q Do you think that was a fair assessment for where he was in  
10 his industry?

11 A I think so. He's a young man at the time, and he was pretty  
12 high up the ladder for what he's doing.

13 Q And he had moved up the ladder very quickly in his industry?

14 A I think so. I guess I'm not an expert in how quick that  
15 would be. It would have been about probably 12 or 14 years  
16 probably. I think that's quick.

17 Q You indicated physical strength was important in that line  
18 of work or in that industry.

19 A It's very important, yes.

20 Q And it's safe to say the physical strength -- Ray Dunn's  
21 personal strength and physical abilities were important to  
22 his success in the industry?

23 A Yes.

24 Q And there's no dispute that he can't do that anymore?

25 A That's correct.

1 Q Are you aware that Mr. Dunn was also a fire fighter for the  
2 City of Buckley?

3 A Yes.

4 Q And again, physical strength and physical activity are very  
5 important in that line of work?

6 A Yes.

7 Q And I think we're in agreement that he cannot do that type  
8 of work anymore either?

9 A I think that's correct, yes.

10 Q You brought some materials with you today for your testimony  
11 indicating you'd reviewed a series of medical files, and you  
12 brought a manila folder that contains your own work. Is  
13 that right?

14 A Yes.

15 Q Is the material that would be found in those files, in other  
16 words, the medical employment records, and then the testing  
17 data and occupational information that's in your file, the  
18 type of documentary information that would normally be  
19 relied on by an expert in your field?

20 A Yes, sir.

21 MR. SHAFFER: We would move for the  
22 entry of all of those exhibits subject to redaction to  
23 comply with the court's orders that certain evidence has to  
24 be excluded for various reasons.

25 MR. NOVASKY: I don't object with the

1 additional condition that redaction would include possible  
2 work product, attorney-client privileged information.

3 Q (By Mr. Shaffer) You indicated that Mr. Dunn had  
4 suffered -- I'm not sure whether you said he had  
5 psychological problems or he is tremendously upset.

6 These are problems that have persisted since 2002. Is  
7 that right?

8 A Since injury, I believe, or shortly thereafter, yes.

9 Q So for the past two, two and a half years, he has  
10 experienced what you describe as fairly severe -- I think  
11 you said tremendous psychological problems and feelings of  
12 depression or similar problems. Is that right?

13 A Frustration, anger. I mean the whole thing. He lost his  
14 livelihood, and things have not gone smoothly with the folks  
15 that he's been working with all the time, so things are  
16 difficult for him.

17 Q Now, one of the reports in your file shows that Ray has  
18 tried to go back to work on a part-time basis or on a  
19 training basis with Corona Steel. I believe he worked with  
20 Greg Schoenley, S C H O E N L E Y, to try to develop a  
21 return to work.

22 Are you familiar with that?

23 A I don't recall that in there, so I must have missed it.

24 I remember there was some discussion at one point in  
25 time about a light-duty position, but that's all I can

1 recall.

2 Q Do you remember whether or not his doctors restricted him  
3 from doing it because of the physical demands of the job?

4 A I know that there was a light-duty job analysis. A job  
5 analysis is a description of the physical aspects of the  
6 job. There was a light duty job analysis that was  
7 disapproved of, I believe, by the physicians. I don't know  
8 if it's the one you're referring to or not.

9 Q It's safe to say that his physicians over the past two and a  
10 half years have restricted him from returning to certain  
11 kinds of jobs, even though Ray was willing to do them,  
12 because of the physical demands of those jobs?

13 A I think he's been restricted, yes.

14 Q I want to talk a little bit about the college programs that  
15 you suggested or discussed with Mr. Novasky. That's a  
16 possible five-year program or a possible two-year program.

17 The ladies and gentlemen of the jury are obviously  
18 going to be asked in this case to put Ray Dunn back in the  
19 position he would have been in if these injuries had not  
20 prevented him from going back to work. And ordinarily, if  
21 we were in the courtroom today, I'd have a blackboard, and  
22 I'd start writing things on it, as you probably are familiar  
23 with lawyers doing.

24 Instead of a blackboard, I just drafted some things on  
25 to a piece of paper, and I will move for entry of this as

1 Exhibit 2 at this time.

2 MR. NOVASKY: I would object to this  
3 exhibit.

4 Q (By Mr. Shaffer) What I have done is put down the items  
5 that you described for a five-year degree that Mr. Dunn  
6 would need. And I'm wondering, do you have a pen and could  
7 you maybe -- or can I hand you a pen?

8 A There's one right here, if you don't mind blue.

9 Q Right. I think you already testified to this in  
10 Mr. Novasky's questioning, but could you go ahead and fill  
11 in the rest of that?

12 What is it going to cost to go to five years of college  
13 to become a construction manager? And feel free to use a  
14 range, if that's necessary.

15 A Well, let me look at the documents for two seconds here.

16 You've got roughly \$5,800 a year for the four years for  
17 the four-year school, so \$6,000 would be \$12,000, so make it  
18 \$11,500; and about \$6,000 for the tuition at the community  
19 college, so that's \$17,500. That does not include any  
20 preparatory courses he would have, because we don't know  
21 what those would be. It would probably not be a large  
22 charge for those, but some.

23 So if I've done my math correctly, for tuition and  
24 books, I've got \$17,500.

25 Q For a five-year college program?

1 A Right.

2 Q Safe to say that's less than you pay for your children to go  
3 to college, correct?

4 MR. NOVASKY: Objection, irrelevant.

5 A Yes. It's accurate for the state data. What I'm using is  
6 information from Washington Occupational Information System,  
7 and that \$4,968 is the undergraduate tuition at University  
8 of Washington. If you assume two years, that's \$10,000.  
9 The books are roughly \$800 a year, so that's \$1,600, so  
10 that's \$1,600.

11 I didn't bother to look up the community college  
12 education because I know it's just under \$6,000. So that's  
13 \$17,500 or so.

14 Q (By Mr. Shaffer) Maybe a better way to ask my question  
15 would be, if he went to PLU or UPS in Tacoma, the cost would  
16 be substantially more. Is that correct?

17 A Yeah. The tuition there is more like \$25,000 or \$30,000.

18 I haven't looked at it in a while, but I think it's  
19 probably about \$25,000 a year for the tuition so --

20 Q Then the next blank I asked you to fill out on my piece of  
21 paper instead of using the blackboard is the number of years  
22 that he would not -- I'm sorry.

23 Could you estimate what amount of income that he would  
24 not receive during the time he's in school full-time?

25 Again, it's okay to express that in a range if that's



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14 EXAMINATION INDEX

15 EXAMINATION BY: PAGE NO.  
16 Mr. Novasky 3

18 REQUEST FOR PRODUCTION

19 DOCUMENTS REQUESTED PAGE NO.  
20 Herb Tyler address and phone number 116

22 EXHIBIT INDEX

23 EXHIBIT NO. DESCRIPTION PAGE NO.

24 (No exhibits marked for identification.)

25

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1 BE IT REMEMBERED that on Thursday,  
2 July 10, 2003, 9 o'clock a.m., at 1201 Pacific Avenue,  
3 Suite 2100, Tacoma, Washington, before TONI R. BAILEY,  
4 CCR, RPR, Notary Public in and for the State of Washington,  
5 appeared RAY E. DUNN, the witness herein;

6 WHEREUPON, the following proceedings  
7 were had, to wit:

8

9

<<<<<< >>>>>>

10

11 RAY E. DUNN, having been first duly  
12 sworn by the Notary, deposed  
13 and testified as follows:

14

15

## EXAMINATION

16

BY MR. NOVASKY:

17

Q Mr. Dunn, as you know, my name is Rob Novasky. We met just  
18 prior to your deposition. First of all, is your formal  
19 name Raymond or is it Ray?

20

A Ray.

21

Q Okay. Have you ever had your deposition taken before?

22

A Yes.

23

Q In what context?

24

A On an arson trial.

25

Q And were you a witness or a party?

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- 1 in terms of the pain or the difficulties?
- 2 A No.
- 3 Q I guess more to the point, were you seeing the chiropractor  
4 for the injuries that you got in the accident?
- 5 A From the 6th of July on?
- 6 Q Right.
- 7 A Yes.
- 8 Q How long was it after the incident that you went back to  
9 work?
- 10 A I went back -- I may have been back at the job site later  
11 that afternoon. But I went to work on the 6th.
- 12 Q And did you work continuously from the 6th until you  
13 stopped working for your surgery?
- 14 A Off and on. You know, doctors appointments or if you had  
15 bad days and couldn't make it to work. You know, it was --  
16 the farther it got along the worse the pain got. It got to  
17 a day by day deal.
- 18 Q It looks like -- if the records are correct it looks like  
19 you received chiropractic treatment for July, August and  
20 September. And then it was in mid September when you went  
21 to Cascade Orthopaedic and Fracture Clinic. Is that  
22 correct?
- 23 A I don't know about the dates, but yeah, that seems about  
24 right. We went through a series of treatments with the  
25 chiropractor, massage therapy, and finally got to a point,

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1 listen -- you know, we sat down and talked. We're not  
2 getting no better. There's still something wrong. And  
3 that's when I was referred to Dr. Becker.

4 Q Now, you said something about massage therapy. Did your  
5 chiropractor refer you to massage therapy before you saw  
6 Dr. Becker?

7 A Yes.

8 Q And who was doing the massage therapy?

9 A It's called Aaah Massage. Jan Covey. She works right out  
10 of the chiropractic clinic there.

11 Q So the chiropractor referred you to Dr. Becker and you saw  
12 Dr. Becker, again according to the records, mid September  
13 of 2001. I take it during that first appointment  
14 Dr. Becker did an examination, correct?

15 A I'm assuming. I don't remember that first visit.

16 Q At all?

17 A I don't recall -- I don't recall it.

18 Q Why don't you recall it?

19 A I guess, why would I? I mean, I've probably seen a half a  
20 dozen, eight doctors in the last year and a half. I don't  
21 know how many appointments. I mean, I had one yesterday I  
22 can barely remember what was talked about.

23 You know, there's so much information there, I guess.  
24 But I remember -- to recall it I would have to say that we  
25 talked about the pain. There's no way that they can put

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- 1           their finger on it saying what's hurting. So I'm sure I  
2           was set up for MRIs and a series of tests after that.
- 3    Q       Do you recall if any x-rays were taken by Dr. Becker, just  
4           plain film x-rays?
- 5    A       I don't recall.
- 6    Q       And it looks like Dr. Becker did send you to Valley  
7           Diagnostic Imaging for an MRI after that first appointment.
- 8    A       Yes.
- 9    Q       Do you remember whether you saw the actual MRI film after  
10          it was done?
- 11   A       I'm sure I did. I do believe I was the carrier of those  
12          films back. But, I mean, that's like looking at Japanese.  
13          It don't mean nothing.
- 14   Q       Sure. No, I understand that. I'm just curious. You know,  
15          sometimes a patient doesn't even see the film. They just  
16          hear about what the film says. And I was curious if you  
17          ever actually saw the film.
- 18   A       Yeah.
- 19   Q       Did you discuss with Dr. Becker what you were seeing on the  
20          MRI?
- 21   A       I'm sure we did. I mean, under Dr. Becker's care I had, I  
22          think, two sets of MRIs, a 3D bone scan, nuclear bone scan,  
23          two discograms. And I'm sure each and every one of them  
24          there was a discussion on, you know, what the results were.
- 25   Q       Do you recall anything about those discussions from your

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1 understanding?

2 A I would think -- I'm guessing that the conversation had to  
3 go down the path that the MRIs were inconclusive. So,  
4 therefore, another test would be ran. And when we got to  
5 the first discogram that apparently appeared to be pretty  
6 conclusive and surgery was scheduled after that.

7 Q Between the time that this incident happened and the time  
8 that you and Dr. Becker decided that surgery was going to  
9 occur describe for me what the pain was like and how often  
10 you were having pain.

11 A Pain was daily. And then it would just increase. It got  
12 to a point where you would -- if you were doing something  
13 strenuous at work, within an hour you were working on your  
14 hands and knees.

15 I remember one of the guys, I was on his job working  
16 over on the coast somewhere. And he came up. And I  
17 remember saying to him, I says, "Have you ever seen this  
18 before?" And it was me on my hands and knees working.

19 Q Did the pain get worse over time?

20 A From the date of the accident? Yes, it did.

21 Q And did you have pain any place else besides your lower  
22 back during that same period of time from the accident  
23 until the time you decided to have surgery?

24 A Yeah. I had sciatic pain. I can't remember -- I really  
25 never had complete sciatic pain all the way down both legs.

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1 And since I've been hurt and since surgery I think it has  
2 actually switched legs. I can't remember without going  
3 back through. But as soon as surgery was done the original  
4 sciatic pain was gone.

5 Q There was some mention initially about some neck pain.

6 A Mm-hm.

7 Q And I think you also testified that you remember having  
8 neck pain within about five minutes of being struck. What  
9 happened with the neck pain?

10 A The neck pain actually through chiropractic and massage and  
11 whatnot slowly got better. It has never really been an  
12 issue even today unless the back flares up. When the back  
13 flares up it's like it's got a hold of a chain cord and  
14 it's pulling right down on your neck.

15 Q And with regard to the head again, there was I think  
16 mention initially about some headaches. Did you have  
17 continuing problems with headaches that you attribute to  
18 the accident?

19 A I don't remember having -- I don't recall if I had a  
20 headache after it happened, right after it happened, or  
21 not. As far as headaches I've got my own opinion. But I  
22 have in my medical records a history of migraines. So,  
23 therefore, any relationship with this accident and a  
24 headache is thrown out because I had the history.

25 Q Okay. So we're dealing with the low back -- there was a

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1 period of time for your neck, but the ongoing problems that  
2 you're having now have to do with your low back; is that  
3 correct?

4 A Low back and the neck and the sciatic. I mean, if the low  
5 back would go away, I'm sure the neck would go away. And  
6 if the low back would go away, I'm sure the sciatic would  
7 go away.

8 Q After this incident happened, but before surgery, were your  
9 work duties modified in any way?

10 A Before surgery?

11 Q Right.

12 A Yeah. I was -- I was my own keeper. I was never harassed  
13 if I lightened up or if I had to take time off because of  
14 it. You know, they let me do my own thing.

15 Q Do you recall -- again, during this period of time between  
16 the incident and time of surgery -- how many days you lost  
17 from work?

18 A I don't recall. And I don't even know if I would have a  
19 record of why I was off that day. I mean, when you get  
20 hurt like something like that you figure, okay, you go to  
21 the chiropractor and get it straightened out and, you know,  
22 you work with it and go on.

23 So it just over a period of time -- I didn't keep any  
24 records, let's put it that way, as far as why I was off.

25 Q I guess what I'm wondering, Mr. Dunn, is if you have some

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1 record of the amount of time that you lost income or lost  
2 wages between the time of the incident and the surgery?

3 A No, I do not.

4 Q were you paid on an hourly basis or salaried?

5 A Hourly basis.

6 Q And what was your wage at the time of the incident?

7 A I'm supposed to know that, aren't I? I do believe it was  
8 \$28.22 was my base hourly rate.

9 Q Was it common for you to work overtime prior to this  
10 incident?

11 A No. I'm one that will only work it if it needs to be  
12 worked. I don't like working --

13 Q Between the time of the incident and the time that you  
14 stopped working because of the surgery did you have a wage  
15 increase?

16 A Boy, you're going to test me now. I can't remember when  
17 our contract was up. I don't believe so. From the time I  
18 got hurt to the time of surgery I do not believe there was  
19 an hourly increase. I could be wrong. If it was, it would  
20 have been the first of July.

21 Q And that would show up in your wage records, wouldn't it?

22 A Yes.

23 Q Okay. Between the time of the incident and the time that  
24 you underwent surgery in October of 2001 was there any  
25 particular form of treatment that you were receiving that

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1           helped you?

2    A       Chiropractic would have been the only one from the time of  
3           the injury prior to surgery, yeah.

4    Q       It looks like -- other than the massage therapy you got at  
5           the chiropractic office it looks like you didn't have any  
6           other physical therapy or that kind of treatment before the  
7           surgery?

8    A       No, I did not.

9    Q       was there an opportunity at Corona for you to go into a  
10           position as a superintendent where you could do just the  
11           larger jobs so you could do more desk type work?

12   A       No. There's not a job market out there unless you're with  
13           a nationwide -- you know, Bechtel and PKS that are  
14           overseas. Yeah. In the State of Washington in steel  
15           erection I don't think there's a job like that.

16   Q       Okay. Prior to your surgery was there any discussion  
17           between you and your doctors about the possibility that you  
18           would not be able to return to your job as an iron worker?

19   A       There was no discussion about not returning. The  
20           discussion was if things went well, two months I'd be back  
21           at work.

22   Q       when you went back to work at the Green River project did  
23           you have any further contact or dealings with anyone from  
24           Finishers?

25   A       I would have had to. I'm sure I did.

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1 Q And do you recall in what context that contact would have  
2 happened?

3 A It would have been about the job, professional on the job.

4 Q Do you recall having any discussions with anyone from  
5 Finishers about the accident itself?

6 A I remember talking to somebody from -- I think their main  
7 office came up, their field superintendent. I couldn't  
8 tell you his name. I do believe he came the next day. So  
9 that would have been the 6th.

10 Q Can you describe him?

11 A No, because I'd be guessing. You know, in my mind six foot  
12 tall, slender. But I couldn't tell you if he had a  
13 mustache, glasses, or anything like that.

14 Q Was he --

15 A Mexican.

16 Q That was my next question.

17 A Or Latino.

18 Q And do you recall what the discussion was with that person  
19 about what happened?

20 A Yeah. We -- it was actually -- it was a pretty subtle  
21 conversation. I expressed to him -- let me back up.

22 There was already discussion prior to him being there  
23 about assault charges being filed upon me. So that came  
24 into the conversation. And the first thing -- when he came  
25 up he apologized for what happened. And I told him, I

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1 be, the pick up is done correctly.

2 In that context is what I am wondering if you can  
3 characterize --

4 A Middle of the road, average.

5 Q Okay. Now, we've been talking about the treatment you had  
6 leading up to your surgery at the end of October. As I  
7 understand it it was actually the 30th of October you had  
8 surgery?

9 A I do believe that's right.

10 Q How long were you in the hospital?

11 A Just several hours. I was -- I had the option of spending  
12 the night there. Wasn't real hip on the care I was  
13 getting. So we opted for just leaving. So it would be day  
14 surgery.

15 Q What were your concerns about the care you were getting?

16 A I mean, it was -- I guess to put it bluntly it would be  
17 like having a hippy take care of you. I mean, there was  
18 people coming in that were unprofessional, acting  
19 unprofessional. Bad care.

20 Q And who actually did the surgery?

21 A Dr. Becker. As far as I know he did.

22 Q So you were in and out of the hospital the same day for  
23 that surgery?

24 A Yes.

25 Q And what is your understanding specifically of what was

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- 1 done?
- 2 A Three disks in the back were damaged. Two of them were not  
3 impinging on anything bad enough to do surgery. One was  
4 wrapped around the nerve. So the surgery was going in to  
5 trim the disk out away from the nerve to relieve any of the  
6 pressure.
- 7 Q It looks like you actually started physical therapy a  
8 couple weeks after the surgery?
- 9 A Mm-hm.
- 10 Q And that was with Stuart Jones?
- 11 A Correct.
- 12 Q Now, is he an independent or is he with some sort of a  
13 clinic or --
- 14 A He's an independent. He's actually -- Stuart Jones is the  
15 owner of that clinic.
- 16 Q And were you referred to him by Dr. Becker?
- 17 A Yes, I was.
- 18 Q Did you see any other doctors at Cascade Orthopaedic  
19 besides Dr. Becker prior to and immediately after your  
20 surgery?
- 21 A Not immediately. A second discogram was done in  
22 conjunction with Cascade Orthopaedic. And it was done by  
23 another doctor, but I couldn't tell you who it was.
- 24 Q And that was after your surgery?
- 25 A Yes.

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1 Q If I recall from your testimony earlier this morning you  
2 said that right after the surgery the sciatic issue that  
3 you had was gone?

4 A Correct.

5 Q Were there any complications from the surgery that you  
6 recall?

7 A I don't know. What would you call complications?

8 Q That's a good point. I'm assuming that during the recovery  
9 period for a period of weeks, maybe even more than a month,  
10 there were times when you would have pain in your back. Or  
11 you may turn a certain way and you feel a twinge. And  
12 that's just part of the recovery process.

13 What I'm wondering is did you have a complication  
14 where you had to go back to the doctor because you were in  
15 so much pain that you just couldn't stand it, for example?

16 A Never to the extremities where, you know, the pain was a  
17 high enough level where you needed to go back to him. No  
18 complications that severe. We kept going back and, you  
19 know, as time went on and I didn't improve they tried  
20 different things at physical therapy, so on and so forth.

21 Q Immediately after the surgery did the pain in your back  
22 clear up for a period of time?

23 A No. You had residual -- I don't know if it was residual  
24 surgery pain, but it stayed constant.

25 Q Was the pain after the surgery different from the pain

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1 before the surgery?

2 A Yes, it was.

3 Q How so?

4 A More severe. You know, constant. Whereas prior to surgery  
5 it was only under aggravation, you know, under movement,  
6 then the pain would start. Yeah. It was definitely  
7 different.

8 Q Did you talk with Dr. Becker about that?

9 A Yes.

10 Q What was the response?

11 A I don't know exactly what the response was. I know that at  
12 the two-month period when I was supposed to be released to  
13 go back to work -- you know, that was the presurgery  
14 message. I was in his office arguing with him trying to  
15 find out what was going wrong and why I was still screwed  
16 up.

17 Q And from your point of view what was the explanation?

18 A There was no explanation. You know, until you go through  
19 this and you talk to as many doctors as I have, nobody has  
20 the answer. Nobody.

21 Q I guess what I'm wondering is -- and I'm not trying to push  
22 on you. I just want to find out and make sure I'm clear.

23 oftentimes people will go in and say, look, Doctor,  
24 you said this was supposed to make it better. It's not  
25 getting better. What's going on? And the response is,

1 well -- anything from, well, it's just something that's a  
2 risk of surgery, there's no guarantees, to there's further  
3 problems we have to deal with.

4 And I'm wondering if you had any kind of a response  
5 along those lines?

6 A I'm sure that was under conversation. And I'm not sure,  
7 but I would think that the second MRI would corroborate  
8 that. But stating -- the doctor stating that maybe  
9 something was missed. You know, maybe you did something in  
10 physical therapy that is aggravating the condition. But  
11 I'm sure that conversation of being unsure and taking the  
12 next path to find out.

13 Q During that two-month period after the surgery did you  
14 attempt to go back to work at all?

15 A No.

16 Q After that two-month period did you ever attempt to go back  
17 to work at Corona or through the union?

18 A No. I mean -- no, not for work. I think it was in April  
19 was the first time I was trying to go through some  
20 vocational training at University of Washington. But that  
21 got shut down by the state.

22 Q Immediately after the surgery you indicated that the issue  
23 with your legs was taken care of and at some point it  
24 sounds like it started to come back?

25 A Yes.

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- 1 Q How long was that after the surgery?
- 2 A You know, I don't know exactly, but I do remember having  
3 sciatic problems again after the second discogram.
- 4 Q When was that in relation to the surgery?
- 5 A It was after the surgery I'm sure. A couple months.
- 6 Q When you were beginning your physical therapy in November  
7 of 2001 was the physical therapy passive? And by that I  
8 mean, were they giving ice and electrical stimulation or  
9 were you actually doing exercises?
- 10 A Everything. Combination of everything.
- 11 Q What were you doing specifically in terms of the  
12 treatments, physical therapy treatments?
- 13 A They were using what they called a TENS unit, you know, the  
14 muscle stimulators, stretching, bike work. I mean, walk  
15 through their gym. I mean, a little bit of everything.
- 16 Q Was that helping at all?
- 17 A At first it was. And then at the two-month period when we  
18 weren't making any progress as far as my condition the  
19 physical therapy was doubled. And from there on it was  
20 downhill.
- 21 Q There's an indication in the physical therapist records in  
22 December that you were thinking of switching doctors. And  
23 I'm going to assume you're talking about Dr. Becker. Were  
24 you thinking of switching from Dr. Becker's treatment?
- 25 A Yes. The reason being for that -- I want to explain -- is

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1 after that argument on the second -- after the two-month  
2 era and he sent me in for the MRI, I went and got the MRI.  
3 When I got the result and carrying them back trying to make  
4 an appointment with Dr. Becker, no phone calls were  
5 returned, couldn't get a message to him, nothing.

6 And so I went to the state and said, hey, listen. I  
7 had this argument with my doctor. This is what I've done.  
8 This is how I've tried to contact him. No response. I  
9 need to seek out another surgeon or doctor.

10 Q And the argument was with regard to the fact that you hit  
11 the two-month period and he was saying --

12 A No. There was no improvement. There was no improvement  
13 for me going back to work. You know, I was still a  
14 crippled up dog.

15 Q Did you actually switch doctors?

16 A Not at that time, no. I did go see another one, though.

17 Q Who was that?

18 A Michael Schlitt.

19 Q And how did you get to Michael Schlitt?

20 A I knew a paramedic for King County and she recommended him.

21 Q Between that two-month point and the time that you saw  
22 Dr. Schlitt, which was as I understand it January of  
23 2002 -- so that's an additional two-month period of time --  
24 was the physical therapy treatments or the chiropractic  
25 treatments helping?

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1 A The chiropractic treatments always helped because they gave  
2 you somewhat of some temporary relief. What they did to do  
3 it, I don't know. You'd have to ask them. But as far as  
4 the physical therapy, no. I had problems at one point  
5 where I ended up actually firing Stuart Jones Physical  
6 Therapy.

7 Q Did you have any complications in terms of an infection or  
8 difficulties with the surgical site itself after the  
9 surgery?

10 A No.

11 Q Am I correct that they made a relatively small incision, a  
12 couple three inches, and went in and did the correction and  
13 then sutured that up, stitched it up?

14 A Correct.

15 Q Did you have to go back to have the stitches removed or  
16 were they dissolving stitches?

17 A I don't recall.

18 Q Your records indicate you saw Dr. Schlitt in January of  
19 2002. And as I understand it, he did see you on a  
20 consultation basis, but indicated he couldn't treat you  
21 ongoing?

22 A Correct. His directions to me were, one, find a way to  
23 kiss Dr. Becker's butt and get back in and see him. And  
24 that when my pain level got to a point where I couldn't  
25 stand it anymore my next option in his opinion was a

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1 fusion.

2 Q And do you know why Dr. Schlitt wanted you to get back with  
3 Dr. Becker, if you could?

4 A I don't know. I don't know what his reasoning for that  
5 was. He just wasn't anxious to pull me on board. I know  
6 that.

7 Q Was there any discussion with Dr. Schlitt about whether or  
8 not you'd be able to return to work?

9 A As an iron worker?

10 Q Right.

11 A I do believe there was a conversation about definitely  
12 thinking about finding a different career path because  
13 after that surgery, you know, that the full duty of an iron  
14 worker wasn't a very good option.

15 Q So at the point that you saw Dr. Schlitt in January, 2002  
16 it was in your mind that you may have to look for some  
17 other form of work to do?

18 A Correct.

19 Q Had you thought at all about what kind of work?

20 A Yeah. I wanted to be the next Curt Gowdy. But that didn't  
21 work. The only positive direction I thought I could go  
22 with a new career was to stay in construction. And so I  
23 was thinking about project management and estimation.

24 Q Did you do anything in terms of investigation about what it  
25 would take to be qualified or get a job in that role?

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1 A Yes. The minimum requirements is what I investigated in.  
2 I mean, initially you got a money limit and a time limit  
3 bound by the state that you can spend and how long you can  
4 do it. So you were caught trying to cut as many corners to  
5 get the classes that you needed to do that.

6 Q Was that a feasible thing for you at that point?

7 A Actually, I don't know if feasible was a good word. It was  
8 just about really the only option I had to go. To try to  
9 keep any kind of an income is to stay within the field that  
10 I'd known for twenty years.

11 Q Was there any discussion between you and Dr. Schlitt about  
12 how to go about moving into another field from the  
13 standpoint of your back and the continuing problems you  
14 were having?

15 A I don't believe Dr. Schlitt and I had that kind of a  
16 conversation. It's possible, but I don't remember it.

17 Q It looks like you returned back to Dr. Becker's office  
18 later in January. Is that correct, as you recall?

19 A Mm-hm.

20 Q And were you able to patch things up so you could continue  
21 the treatment with him?

22 A Yeah, somewhat. I ended up having to go through the back  
23 door and get ahold of the office manager and tell her this  
24 is what has happened. And she got me the appointment and  
25 actually cleared the air with Dr. Becker. Because he had

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1 already gotten a report from Dr. Schlitt. So he knew that  
2 I went and seen another doctor. So we got that all cleared  
3 up and, you know, proceeded from there.

4 Q Was there any discussion between you and Dr. Becker or you  
5 and Dr. Schlitt about whether chiropractic care should  
6 continue or not continue?

7 A The only thing I can recall any of them saying, if it  
8 helps, makes you feel better, keep going. It's up to you.  
9 At no time has any of the doctors said don't go.

10 Q It looks like from Dr. Becker's note in January, on the  
11 January 11th date, that he recommended you increasing your  
12 physical therapy to five times a week?

13 A If that's what it says. I know there for a while I was  
14 doing quite a bit.

15 Q That was my next question. Do you recall actually doing  
16 physical therapy five times a week?

17 A You know, I can't recall if it was five or four. I know it  
18 was a lot.

19 Q After the surgery, during this period of time in the few  
20 months after the surgery, were you continuing to take  
21 medication?

22 A As needed.

23 Q And what were you taking?

24 A Oh, at that time after surgery I was given Vicodin and I  
25 think an anti-inflammatory. And I couldn't tell you what

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1 it was. And it was changed over to Hydrocodone. And those  
2 were the pain medications until November of '02 when I was  
3 given a prescription of Percocet by Dr. Lieberman.

4 Q And you said as needed. were you finding yourself having  
5 to take those medications on a fairly regular basis between  
6 the time of the surgery and the time that you were switched  
7 to another medication?

8 A No. I mean, post surgery, yeah. You were doped up pretty  
9 good for the first couple weeks. But after that, you know,  
10 if you moved wrong or you slipped or stumbled and you  
11 aggravated something and it spiked the pain up, yeah. Like  
12 I said, that would be on an as needed basis.

13 Q Were you given a specific weight restriction by one of your  
14 doctors or your physical therapist in terms of the amount  
15 that you could or could not lift?

16 A At what time?

17 Q Again, during this period of time between November of 2001  
18 and January of 2002.

19 A You know, I don't recall. I don't recall if there was a  
20 weight limit there or not, if I was told -- I'm sure there  
21 was a weight limit that I did at therapy. But I don't know  
22 if I was told an amount.

23 Q were there any specific instructions given to you about  
24 what activities or what level of activity you could pursue  
25 or that you should not pursue after the surgery?

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1 A I was always told never to exceed limitations of physical  
2 therapy. So if I could do twenty -- carry twenty pounds or  
3 whatever at physical therapy, then you're okay to do it at  
4 home. So if you stayed within the parameters of physical  
5 therapy, you're fine.

6 Q During this period of time from after surgery through  
7 January of 2002 that you're off work and you're going to  
8 physical therapy, when you're not in physical therapy what  
9 are you doing during the day?

10 A Varies. You know, a lot of sitting on your butt and  
11 gaining weight. You know, it seemed like the first several  
12 months was trying to find doctors. You know, trying to  
13 find some way to get the back better.

14 I mean, that tops in my mind as being my activities.  
15 I'm sure I may have been out trying to, you know, tune a  
16 carburetor on a lawn mower or something like that. But I  
17 mean, the main thing was the back.

18 Q And what I was wondering -- I mean, I understand what  
19 you're saying. I guess what I was wondering is did you  
20 find yourself most of the time sitting -- for example,  
21 sitting in a recliner or bed rest when you weren't in  
22 physical therapy or were you able to move around the house  
23 and do some light things like minimal chores or --

24 A You could -- I mean, you weren't crippled. I mean, you  
25 tried to go out walking twice a day. You know, you tried

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1 to get as much movement into your back. Sit down in a  
2 recliner? I'd sit down. You know, an hour and a half  
3 later if you could get up and do something, great. You  
4 were told to stay as active as you could be.

5 Q There's a note in the Corona Steel records. It's actually  
6 from a safety administrator, Greg --

7 A Schoenle.

8 Q -- Schoenle. Thank you. And I'm looking at a note from  
9 February 27, 2002. And this is sort of taken out of  
10 context, but I just want to ask you about this.

11 The indication is, "Could modify this working  
12 supervisor role to a light duty working supervisor  
13 position, something along the lines as a walking boss, desk  
14 person." Referring to a job in Seattle that was supposed  
15 to start sometime in the spring. Do you recall discussions  
16 about that?

17 A Yeah. what they -- it was a discussion between a  
18 vocational counselor and Corona. Of course, their big  
19 thing is to get you out of the system and back to work.  
20 And so Corona wrote up their best light duty job that they  
21 could offer at that time and presented it to the state.  
22 And then I had to go through a physical capabilities  
23 evaluation to see if I met that criteria for that job.

24 Q what happened?

25 A I didn't make it. Didn't meet the requirements.

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1 Q what were the requirements you didn't meet?

2 A I don't know exactly without reading that full report. But  
3 it stated that four to six hours is all I'd make it in a  
4 day. And somewhere in the records it's not -- I don't know  
5 if it's in that report or in the vocational counselor's  
6 report that was verbatim to the physical therapist. But  
7 that told the counselor that it's four to six hours of  
8 light duty, but this guy wouldn't make it past one day on  
9 the job.

10 Q were there any other options like that, the one we just  
11 talked about, that came up in the spring of 2002?

12 A No. I mean, we -- I'm sure there was some kind of  
13 discussion about whether or not there would be a  
14 possibility of a project management or estimation job if I  
15 went through classes and training.

16 Q Did you ever start any class or training for project  
17 management or estimation?

18 A No, I did not.

19 Q why not?

20 A For one, I couldn't sit in a chair long enough to go to any  
21 kind of a class. You know, they're not going to let me --  
22 well, maybe they would let me bring in my own chair.

23 Q Any other reasons besides that?

24 A No.

25 Q You were put through a trial program of -- it looks like a

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1 work hardening program. Occupational therapy, physical  
2 therapy.

3 A Yeah. I went through that I do believe at Good Samaritan  
4 Rehab.

5 Q Right. Did that help?

6 A No.

7 Q Did it make it worse?

8 A Certain exercises did, yeah. But the overall condition,  
9 no.

10 Q Overall since your surgery has your condition stayed the  
11 same or gotten worse?

12 A Gotten worse.

13 Q And how has it worsened?

14 A Just more pain more often, more spikes.

15 Q Have you talked to your doctors about this worsening?

16 A Oh, yeah.

17 Q And from your point of view what is your understanding of  
18 what's going on?

19 A I guess the easiest way, November of '02 talking through  
20 Dr. Lieberman and Wohns it was their opinion that there was  
21 still a problem at the surgery location and that that disk  
22 needed to be removed and fused.

23 So that was kind of like a conclusion to the prior  
24 year of what all the problems had been. So I researched  
25 the surgery that they wanted to do. After it scared the

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1 living hell out of me I decided to try alternative methods  
2 to try to get away from doing that surgery.

3 Q How long has it been that you've been trying other methods  
4 to get away from the surgery?

5 A About seven months now.

6 Q And has there been a discussion in the recent past between  
7 you and your doctors about having a fusion?

8 A No. At that time -- since I didn't want to do the fusion  
9 Dr. wohns would not be a manager of my claim. So I had to  
10 go find another doctor that was a physiatrist. And that  
11 physiatrist is dead set against surgery.

12 Q And that's Dr. Tomski?

13 A Yes.

14 Q why is he dead set against surgery?

15 A You'll have to ask me -- or ask him. I mean --

16 Q I was going to say I just did ask you.

17 A we don't see eye to eye at all. Never since day one. Now,  
18 I have been to another doctor, though, since. In fact --  
19 this is wednesday -- Monday. And that's Stan Herring in  
20 Seattle.

21 Q This last Monday, the 7th? Is that what you're talking  
22 about?

23 A Yeah. I got to make sure my dates are right. Does that  
24 sound right?

25 MR. SHAFFER: Yeah.

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1 Q (By Mr. Novasky) Was that the first time you saw  
2 Dr. Herring?

3 A Yes, it was.

4 Q Have you seen any other doctors in the last six months  
5 besides Dr. Tomski and Dr. Herring?

6 A In the last six months? Dr. Lieberman.

7 Q Who is Dr. Lieberman?

8 A Dr. Lieberman is a pain specialist out of the same clinic  
9 as Dr. Wohns. He actually did the third discogram I had.

10 MR. SHAFFER: Nutter, Devor.

11 THE WITNESS: Oh, yeah. That tells you  
12 how well I remembered that.

13 Yeah. It was Dr. Nutter. That was an IME through  
14 the state. I went through a psychological evaluation and  
15 subsequent eight visits of EMG testing with a psychologist,  
16 Dr. Devor, out of Good Sam.

17 Q (By Mr. Novasky) EMG testing?

18 A They put electrodes -- or not electrodes -- sensors on your  
19 back, make you do movements, and they find out if your  
20 motor sensors in your muscles are working.

21 Q Who made the recommendation for you to see a psychologist?

22 A Dr. Tomski and the claims manager, Curtis Peoples.

23 Q And do you know what the reason was for that  
24 recommendation?

25 A I have my thoughts on what the reason is. I'm sure theirs

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1 are quite different.

2 Q Let me ask you this then: Do you know or do you have an  
3 idea what their thoughts are about having you see a  
4 psychologist?

5 A Yes. They thought I had psychology problems that were  
6 blocking my healing along with an anger problem.

7 Q And your thoughts?

8 A My thoughts was that they were both mad, meaning Tomski and  
9 Curtis Peoples, that how a lowly iron worker dare question  
10 their ability to do their job. And this was their way of  
11 getting me out of their hair for the next two months.

12 Q At the end of the -- you said eight visits, right?

13 A Yeah. It was a total of nine. The first consult and eight  
14 following.

15 Q Did Dr. Devor then discharge you from further consult?

16 A Yes, he did.

17 Q And was there any assessment or report made as a result of  
18 that counseling?

19 A Yes, there was.

20 Q what is your understanding of what Dr. Devor's conclusions  
21 were?

22 A Dr. Devor's conclusions in my -- I guess the way I  
23 perceived it was that there was no psychological problems  
24 blocking anything, you know, as far as me getting any  
25 better.

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1 Q So I take it then after that series of counseling sessions  
2 there was not a recommendation for further counseling?

3 A No, there was not.

4 Q And I don't mean that in a disparaging way. I'm just  
5 trying to track what I've got here.

6 Have you actually stopped your treatment with  
7 Dr. Tomski then?

8 A No, I have not. In fact, I just seen him yesterday.

9 Q Do you have any appointments scheduled with Dr. Tomski in  
10 the future?

11 A No, I do not. But I'm sure I'm going to be hearing from  
12 him. He's going to schedule me for another PCE here  
13 shortly.

14 Q And do you know who that will be with?

15 A I don't know. He told me and I don't remember.

16 Q You had one earlier, correct?

17 A Correct.

18 Q Not with the same person then?

19 A No. It's not with the same company anyway. It didn't ring  
20 a bell.

21 How about if we take a short one?

22 Q Sure. Not a problem.

23 (Recess.)

24 ////

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SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR PIERCE COUNTY

RAY DUNN and JODI DUNN, individually  
and on behalf of their marital community,

Plaintiffs,

vs.

FINISHERS CORPORATION, a Washington  
corporation,

Defendant.

NO. 02-2-11657-0

PLAINTIFFS' TRIAL BRIEF

ASSIGNED TO THE HONORABLE  
BRYAN CHUSHCOFF

HEARING DATE: October 2, 2003

**I. INTRODUCTION**

Plaintiff Ray Dunn was injured when unsecured metal framing studs slid from a hydraulic lift and struck him in the back of his head. As a result of the accident, Mr. Dunn can no longer work and financially support his family. He cannot participate in the numerous physical activities, including volunteer fire fighting, that have long been important to him and his family. The Dunns seek damages for their wage loss, their medical bills, Mrs. Dunn's loss of consortium and family services, and Mr. Dunn's permanent disability and pain.

**II. FACTUAL BACKGROUND**

On July 5, 2001, ironworker Ray Dunn was the 39-year old foreman for Corona Steel at a construction site at Green River Community College. An employee for Finishers Corporation was lifting unsecured load-framing studs on a man lift nearby. As the lift rose,

1 two of the long studs suddenly slid from the stack, sliding under the overhang and crashing  
2 into the back of Mr. Dunn's head.

3 When the studs hit Mr. Dunn, he was standing in a safe place, well under the concrete  
4 overhang of the mezzanine. The force of the blow broke through Mr. Dunn's fiberglass  
5 helmet and cut into his scalp. It caused Mr. Dunn's spine to bend abruptly as it struck his  
6 head. He was taken to the emergency room for immediate treatment.

7 His back injury required spinal surgery. The surgery failed, and his pain and spinal  
8 instability are permanent. Mr. Dunn will never return to normal employment. He also gave  
9 up forever the ability to hike, to camp with his family and friends, to hunt and fish, to golf,  
10 and his job as a part-time firefighter in Buckley.

11 Defendant Finishers Corporation did not follow minimal safety requirements for lift  
12 operation at the site. Finishers also failed to screen and train its employees in lift operation.  
13 Finishers failed to hold required safety meetings. Its employees improperly loaded the metal  
14 studs on the lift. This accident could only have happened through the negligence of Finishers  
15 and its employees.

### 17 III. LIABILITY

18 Ray Dunn was safely underneath a concrete overhang, working at a table that was  
19 placed a safe distance inside the protected area. The sole cause of the accident was  
20 Finishers's carelessness and violation of safety rules, as metal studs could not fall off an aerial  
21 lift absent negligence. Finishers was in violation of WAC rules, and general job safety rules.  
22 *Res ipsa loquitur* also applies.



1 Where the required elements are present, as they are in this case, not only is the  
 2 instruction appropriate, but plaintiffs are entitled to it. Washington's Supreme Court,  
 3 reversing Division III of the Court of Appeals, recently reaffirmed this:  
 4

5 a plaintiff is entitled to an instruction on the doctrine where the  
 6 elements of *res ipsa loquitur* are satisfied, even if the  
 7 defendant's testimony suggests but does not completely explain  
 how the event causing injury to the plaintiff may have occurred.

8 *Pacheco v. Ames*, 69 P.3d 324, 330 (2003). Here, the injury-causing instrumentality was at all  
 9 times in the exclusive control of Defendant. Plaintiff had no control over the metal studs or  
 10 scissors lift. He was standing in a safe location under a concrete overhang, and could not  
 11 have caused the studs to drop. Plaintiffs are entitled to the instruction (WPI Pattern  
 12 No. 22.01).

13  
 14 **B. Hypothetical Medical Treatment Is Irrelevant, and Also Inadmissible.**

15 Plaintiffs filed a supplemental brief expanding upon their Motion in Limine on this  
 16 point. Absent expert opinion testimony that Mr. Dunn will undergo fusion surgery, the issue  
 17 of a "fusion" cannot go before the jury.

18 **V. SIGNIFICANT EVIDENTIARY ISSUES**

19 Evidentiary issues will be addressed in advance of trial, and/or legal authorities or  
 20 evidence issues will be provided to the Court as they arise in trial.  
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## VI. WITNESSES

### A. Lay Witnesses

A half dozen lay witnesses may testify briefly about Ray's activity and abilities, before and after his injury. These include Dave Chase, Troy Peterson, Loren Smith, Brian Butler, Dale Fletcher, Herb Tyler, and members of the Dunn family.

Some Finishers employees may testify in Plaintiffs' case, and have been subpoenaed and/or "noticed" to attend trial. These include Orlando Salinas, Carlos Mina-Moreno, and Josue Bardales. Gustavo Loya and Chris Troxel are managers who may also testify. Interpreter services will be provided for the Spanish-speakers (Mr. Bardales and Mr. Mina-Moreno).

### B. Medical Providers

Several medical providers are expected to testify "live" or by deposition concerning Mr. Dunn's injuries. These include psychiatrists Stanley Herring, M.D., Mark Tomski, M.D., psychologist Jerry DeVore, Ph.D.; Chiropractor Craig Dahl, D.C.; surgeon Virgil Becker, M.D.; and physical therapists Craig Sorenson and Pam Leerar, among others.

### C. Expert Witnesses

Crane/Lift Expert Bradley D. Closson will testify regarding construction safety standards. Economist Robert Moss, Ph.D., will testify regarding Mr. Dunn's projected lifetime income, lost wages and other economic facts and opinions. Vocational Rehabilitation Counselor Merrill Cohen will testify regarding the difficulty Mr. Dunn will encounter attempting to return to work.

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## VII. DAMAGES

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Mr. Dunn was a highly skilled, energetic and accomplished ironworker and supervisor. Widely respected by colleagues and others, he had every reason to look forward to a continued successful career. Mr. Dunn's remaining work life would have been more than 20 years. Mr. Dunn's pre-injury annual salary was over \$95,000 per year. The Dunns' past and future wage loss is approximately \$2,000,000.

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Mr. Dunn has undergone extensive medical treatment of several types in an effort to address his injuries. Bills for his medical treatment exceed \$72,000.00.


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Mr. Dunn personally has suffered and will continue to suffer extraordinary pain and permanent disability. Mr. Dunn's wife Jodi shared in her husband's suffering, and her own life has dramatically changed with Ray's disabilities.

Dated this 6 day of October, 2003.

GORDON, THOMAS, HONEYWELL, MALANCA,  
PETERSON & DAHEIM LLP

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