

1 APPLICANT'S COUNSEL: Ms. Graves

2 WITNESS: Mr. Sims

3 DEFENSE COUNSEL NO. 1: Mr. Baum

4 DEFENSE COUNSEL NO. 2: Ms. Patrick

5

6 **WARM UP**

7 Q BY MR. BAUM: First of all, can you state your
8 full name.

9 A Mark Sims.

10 Q Now, you said that at some point in 2015 you
11 were responsible for supervising / people in the mill
12 area; is that correct?

13 A That is correct.

14 Q When did this time terminate?

15 A Maybe a year, year and a half ago.

16 Q Was / it before or after the accident to
17 Mr. Paul?

18 A After.

19 Q Did the problem with Mr. Paul cause these duties
20 to be removed from your job? /

21 A No, not at all.

22 Q Do you know who hired Mr. Paul?

23 MS. GRAVES: How could that possibly be relevant to
24 the lawsuit we are discussing? That is / not relevant.

25 Please move your questioning along, Counsel.

1 MS. PATRICK: Join in the objection.

2 Q BY MR. BAUM: That is all just for the record.
3 Answer the question, please.

4 A I do / not recall who hired him.

5 Q Were you there when Mr. Paul was hired?

6 A Working for the company at present?

7 Q At present.

8 A No.

9 Q Do you know / how it came to be that Mr. Paul
10 was hired?

11 MS. PATRICK: Objection. Irrelevant.

12 Q BY MR. BAUM: Mr. Sims?

13 A No.

14 Q Do you know how many days Mr. Paul had worked /
15 at Nicholson Lumber before the accident happened?

16 A A few days only.

17 Q What?

18 MS. GRAVES: Excuse me. How many is that?

19 THE WITNESS: Say nine or ten days.

20 MS. GRAVES: Counsel, is /*(1) the witness looking
21 at a document to answer that question?

22 MR. BAUM: No. His testimony is from his memory, I
23 think.

24 MS. GRAVES: Okay. I would like you to / test his
25 memory, then show him documents.

1 Q BY MR. BAUM: Do you know under which person he
2 worked before the accident happened?

3 A Mr. Scott.

4 Q What was Mr. Scott's / position?

5 A He got all the jobs for the company.

6 Q What was he doing at the time Mr. Paul was
7 hired?

8 A Running projects.

9 Q What was Mr. / Paul's job at that time?

10 A Helper.

11 Q Did he work in the mill area?

12 A I do not believe so, not at that time. I am
13 not / sure.

14 Q What happened that caused Mr. Paul to begin
15 working in the mill area?

16 A I believe he was all caught up with his work
17 with / Mr. Scott and was over in the mill.

18 Q Under whose supervision was he in the mill?

19 A He would have been under my supervision.

20 Q Before Mr. / Paul started working in the mill,
21 did you have an opportunity to discuss with him what his
22 job would be in the mill area?

23 A No. /

24 Q Do you know if anyone on behalf of Nicholson
25 Lumber spoke with Mr. Paul concerning his duties?

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A No.

Q Do you / know if Mr. Paul had some background working with power saws before coming to Nicholson Lumber?

A No, I had no knowledge. The background of Mr. / Paul is something I did not know. I did not hire the gentleman.

Q Do you think it is dangerous to put an inexperienced man in / the mill area?

MS. GRAVES: I will object to that. It calls for supposition. I do not know what that means. I instruct him not to answer. /*(3)

END OF WARM UP

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EXAM

MR. BAUM: I really think he can answer the question. We can note your objection for the record, but I would like the witness to answer now. /

THE WITNESS: I am sorry, but I forgot the question. Would you repeat it.

Q BY MS. PATRICK: I will come back to that. I would like to first get additional / background information.

How long have you worked at Nicholson Lumber?

A I have been working there for about 17 years now.

Q Were you hired as a / supervisor, or did you work your way up?

A I started in the mill area, was transferred out, and then came back in as a supervisor. /

Q And how long ago was that? When did you become a supervisor over the mill area?

A Oh, that must have been around the middle of / summer of 2015. I think it was June or July.

MS. GRAVES: Please don't guess, Mr. Sims.

MR. BAUM: I don't believe he was guessing, Counsel. That sounded / like an estimate to me.

Q BY MS. PATRICK: Well, what is your best estimate as to when you became the supervisor of the mill

1 area?

2 A June or July / of 2015. I remember for sure it
3 was summer.

4 Q Do you remember for what period of time you had
5 been in charge of the /*(1) mill area when Mr. Paul had
6 his accident?

7 A Not long. I think it was about six months.

8 Q. Was it part of your job duty to / ensure that he
9 knew how to operate all of the machinery in the mill
10 area?

11 A No, I don't do the training.

12 Q. Do you know how / to run all the equipment in
13 the mill area?

14 A I do.

15 Q And you have never trained anyone on the proper
16 use of that equipment?

17 MS. GRAVES: Objection. / That misstates the
18 testimony.

19 MR. BAUM. It does misstate it. I will join in the
20 objection.

21 Q BY MS. PATRICK: Have you ever trained anyone on
22 the proper use of the / equipment in the mill area?

23 A I have shown a couple people how to work it, but
24 I have never been their official trainer. I was / just
25 helping out.

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Q When you say "helping out," does that mean someone else was responsible for the formal training?

A Yes. Exactly. I would just answer / questions or demonstrate if someone needed help.

Q And how would you know if they needed your assistance?

A Usually they would ask me when I walked / near their area. Sometimes you could tell by looking that there was a problem.

Q Did you know Mr. Paul before you became a supervisor?

A No. /*(2)

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START TYPING

Q BY MS. PATRICK: Before he was hired?

A I had never met him.

Q Did you know if he had experience on the equipment he had used that day?

A No. /

Q Do you think a man without experience could be injured if he were working around this equipment without some instruction?

MS. GRAVES: What he thinks is not / at issue here. The important thing is what he knows.

Q BY MS. PATRICK: Do you know if a man could get injured if he is working around power / equipment without some instruction?

MR. BAUM: I object. Vague and ambiguous.

THE WITNESS: I guess so. I guess it is possible.

Q BY MS. PATRICK: Is there some reason why you did not / try to explain any procedures to Mr. Paul prior to the time he was hurt?

A Only that I was busy with other things at that / time.

Q Did you give him any written materials on safety practices at the company?

MR. BAUM: Do you mean did he do that himself, or did someone? /

1 MS. GRAVES: I understood the question to be did he
2 do it himself?

3 THE WITNESS: That, I do not know. Myself
4 personally, no. I did not give him anything / myself. I
5 do not know if anybody else in the company did. We do
6 not even have anything like that as far as I know. /*(3)

7 Q BY MS. PATRICK: Did you say there are no such
8 items for your employees?

9 MS. GRAVES: The witness may not understand your
10 question. Please ask the question again.

11 Q BY MS. PATRICK: Are any / materials on safety
12 given to the employees of Nicholson Lumber?

13 A There is a book somewhere, but I have not looked
14 at it. I just think / it talks about our company, not
15 safety.

16 MS. PATRICK: Nothing further at this time.

17 MR. BAUM: Mr. Sims, I have a few more questions for
18 you.

19 MS. GRAVES: Before you begin / again, for the
20 record, I will object that this witness did not see the
21 accident. He does not have any knowledge of the
22 accident, and / there is nothing else to discover at this
23 time from this man.

24 MR. BAUM: We do not agree with or accept your
25 statement. Are you going to / let me continue?

1 MS. GRAVES: Go ahead. My objection is for the
2 record.

3 FURTHER EXAMINATION

4 Q BY MR. BAUM: In the four or five months prior
5 to the accident, what was the number / of employees
6 working in the mill area?

7 MS. GRAVES: I object. Vague.

8 THE WITNESS: I do not know. I could say
9 approximately, but I am not sure.

10 Q BY MR. BAUM: You were / the supervisor. I
11 think we are entitled to your best estimate.

12 MS. GRAVES: But we are not entitled to a guess.
13 Please do not guess or speculate. /*(4)

14 MS. PATRICK: He said he can approximate.

15 THE WITNESS: I would estimate approximately five,
16 six, whatever.

17 Q BY MR. BAUM: Would that number change from time
18 to time?

19 A It would.

20 Q When a new / employee came in, was there a
21 procedure that would be observed in showing the employee
22 what he was to do and how to do it? /

23 A That, I do not know.

24 Q Were you the supervisor?

25 A That is correct.

1 Q You mean you do not know what the procedure was?

2 MS. GRAVES: That is argumentative. /

3 Do not answer the question.

4 Q BY MR. BAUM: Was there a procedure that would
5 be followed in showing the employee what he was to do and
6 how he / was to accomplish it?

7 A I am telling you I do not know.

8 Q You do not know if there was a procedure?

9 A Negative.

10 MS. GRAVES: That is his / answer.

11 MR. BAUM: That is what I am trying to establish,
12 Counsel.

13 MS. PATRICK: Objection. He has said it three or
14 four times now.

15 Q BY MR. BAUM: Was there any formal training /
16 session provided to new employees?

17 MS. GRAVES: If you know. Only if you know.

18 THE WITNESS: No.

19 Q BY MR. BAUM: Now, you said there was some
20 written material available that would be / given to
21 employees?

22 MS. GRAVES: He did not say it was given to
23 employees. I think he said some material may be
24 available.

25 THE WITNESS: I think so.

1 Q BY MR. BAUM: Was /*(5) there a process whereby
2 that material would be given to a new employee?

3 A Yes. All new employees or new people receive
4 that, yes.

5 Q Who gave / that to the new employees?

6 A Either myself or the foreman. I am not sure.

7 Q What were these documents called?

8 A I do not recall. They are / put out by OSHA.

9 Q Do they concern safety?

10 A Yes.

11 Q Do they tell employees not to wear loose
12 clothing around machinery?

13 A That is correct.

14 Q Do they / say not to get close to any moving
15 machinery?

16 A That is correct. There are a number of things
17 in there. I do not remember all / that is in there.

18 Q Do you know if Mr. Paul was ever given such
19 information?

20 A I have no recollection.

21 MS. PATRICK: Excuse me. Did you have that /
22 material in May of '15?

23 THE WITNESS: I think so.

24 MR. BAUM: No more questions at this time.

25 EXAMINATION

1 Q BY MS. GRAVES: Mr. Sims, do you have a
2 recollection of seeing the wooden / guard that we have
3 discussed at length today in place on the day of the
4 accident but before Mr. Paul was injured?

5 A I do not / know because I circulate through the
6 mill area, usually not stopping at any one spot. I just
7 keep walking back and forth all the time. /*(6)

8 Q Who was responsible for the setup work for the
9 machines in May that year?

10 MS. PATRICK: Which machines are you asking about?

11 MS. GRAVES: All of them.

12 THE WITNESS: The foreman. /

13 Q BY MS. GRAVES: Additionally, did he have to set
14 up the planer?

15 A I do believe so.

16 Q And was it up to him to ensure that guards were
17 present / on machinery?

18 A Yes, ma'am.

19 Q Did you ever notice before the accident that
20 Mr. Paul would run this machine without guards in place?

21 A I did not. /

22 Q Did it ever come to your attention on any
23 machine operated by Mr. Paul that he would use that
24 machine without guards present?

25 A No.

1 Q Would / you expect Mr. Paul to make sure all
2 guards were in place before operating a machine?

3 A That would be his job, yes.

4 Q Now, after the / accident occurred, was there
5 any talk among the employees concerning the lack of a
6 guard at the time of the accident?

7 A Not at all. Some / of them speak Spanish.

8 Q Did anybody say to you that a guard popped out
9 of the machine at the time the accident was occurring?

10 A I / do not recall being told.

11 Q Did you hear that if a heavier guard were
12 present on that machine, that the accident would not have
13 happened? /* (7)

14 A Not to my knowledge.

15 Q Is it true that after the accident a heavier
16 guard was installed on that machinery?

17 MS. PATRICK: Are you referring to the weight? /

18 MS. GRAVES: I am referring to the strength.

19 MS. PATRICK: Maybe you could clarify if he knows or
20 if he is an engineer or understands what that means,
21 whether / he has any information.

22 Q BY MS. GRAVES: Do you understand my question?
23 Shall I say it again?

24 A Yes, please.

25 Q Is it true that postaccident a steel guard / was

1 put where this board was previously?

2 A Yes.

3 Q Was that guard put in its place?

4 A Yes, ma'am.

5 Q Besides the metal guard that I described
6 earlier / which is now somehow bolted to this machine,
7 was any other part added to the machine after that day,
8 to your knowledge?

9 A Not to my / knowledge, but my job is no longer
10 in that division of the company, so I am not sure.

11 MS. PATRICK: Counsel, how much longer do you
12 have? /

13 MS. GRAVES: One or two questions.

14 Q Did you tell the insurance company how you think
15 this accident had happened?

16 A Not seeing the accident, I could only guess. /

17 Q But when did you speculate as to the cause of
18 this accident, do you know?

19 A After everything was over, after he was taken to
20 the /*(8) hospital.

21 Q Was an ambulance called after the accident?

22 A Yes. We did call, of course.

23 Q Do you recall what you told the insurance agent?

24 A No, ma'am. / It was by telephone. I guess I
25 told him the only way I thought the accident could have

1 happened.

2 Q What was your impression of how / Mr. Paul's
3 accident happened?

4 A The man was using a rag instead of a wire brush
5 to clean out the machine.

6 Q Is it your impression that / the machinery was
7 in use at the time of the accident?

8 A. The power was not on, but the machine continues
9 to rotate for a few / minutes longer.

10 MR. BAUM: I object. That is beyond his personal
11 knowledge. He is not an engineer.

12 MS. GRAVES: All right. I have no further questions
13 at this point. /

14 MS. PATRICK: I have a couple of follow-up
15 questions.

16 MS. GRAVES: Go ahead.

17 FURTHER EXAMINATION

18 Q BY MS. PATRICK: On approximately how many times
19 did you see the machine slow down after the button / was
20 pushed to turn off the power?

21 A I cannot say because I was not in the area at
22 all times.

23 Q Would you approximate it is / more than five
24 times?

25 A It would be speculation on my part.

1 Q No. Do not speculate, just if you can estimate.

2 A Not too frequently.

3 Q Mr. Jones /*(9) is not an employee of Nicholson
4 Lumber today, is he?

5 MR. BAUM: If you know what "employee" means.

6 THE WITNESS: No.

7 MR. BAUM: Has the witness stated that he was an /
8 employee? Is that the testimony of the witness at this
9 time?

10 Q BY MS. PATRICK: Where does he live today?

11 A I do not know.

12 Q Does he live in the / neighborhood?

13 A I do not know. It is none of my business where
14 employees of Nicholson Lumber live.

15 Q Okay. When this machine that was involved in /
16 the accident was received at Nicholson Lumber, did it
17 have any instructions?

18 A You mean this exact one? I think so.

19 Q Is it your belief that / it was the duty of
20 Nicholson Lumber to find out whether or not there were
21 guards on the machine involved in this accident in May /
22 2015?

23 A It would have been their duty.

24 Q Did you say the plaintiff had taken a rag and
25 did something he should not have done, / that the rag

1 became caught in the machinery, which pulled the rag and
2 the plaintiff's hand into the machine, thereby amputating
3 four of the plaintiff's / fingers on his right hand?

4 A I do not think I made that statement.

5 Q During the time you have been employed at
6 Nicholson Lumber, how many /*(10) machines have been
7 purchased for the mill area?

8 A All that are present there now. I think ten.

9 Q Were you responsible for setting up those
10 machines? /

11 A Yes, I was. All of them.

12 Q Is it your belief that if any more guarding is
13 required, it is your responsibility to see that it / is
14 installed?

15 A If I am assigned to that area, yes, but, as I
16 mentioned, my job duty has changed.

17 Q Has anyone else been assigned that / duty during
18 the time you have been employed with Nicholson Lumber?

19 A No one other than myself.

20 Q Have you carried out that duty on each and /
21 every time that a piece of equipment has been sent to
22 your employer?

23 A For the equipment that is there now, yes.

24 Q Do you think Nicholson / Lumber relied on you to
25 properly set up the machine that caused this man's

1 accident?

2 MS. GRAVES: Object to the form of the question.
3 Vague.

4 MS. PATRICK: I will / withdraw the question.

5 Q Did you yourself run this same machine for the
6 purpose of running through an order?

7 A No. Running that machine was not within / my
8 job duty.

9 Q Was this planer working when it came to
10 Nicholson Lumber?

11 A It was in pieces.

12 Q And I take it you had to put /*(11) those pieces
13 together to ensure that it would work?

14 MS. GRAVES: Objection. Vague and ambiguous.

15 THE WITNESS: The foreman did help me.

16 Q BY MS. PATRICK: And besides you and him, did
17 someone / else help you with this job?

18 A No, no one else.

19 Q Did you have some written material at the time
20 period in which you were installing / this machine?

21 A Not to my knowledge, but we must have used
22 something.

23 MR. BAUM: Let me inquire. Do you recall seeing any
24 paperwork that you remember you / used in putting this
25 machine together? Can you testify as to that?

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THE WITNESS: I do not recall any documents. We must have had some documents. How / else could we have put the machine together?

MR. BAUM: I do not know. That is why I am asking you. I understand you were not present / the whole time the foreman was working on putting together this machine. I am trying to jog your memory.

THE WITNESS: I must not be recalling. We / evidently had some type of paperwork for this.

MS. PATRICK: Thank you very much, Mr. Sims. Those are all the questions I have now.

MS. GRAVES: I will state, / for the record, that this entire deposition has been over my objection, and I will say that I plan to move to strike this testimony.
/* (12)

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*****EACH EXAM VARIES. THE ACTUAL TEST GIVEN MAY
BE SLIGHTLY DIFFERENT*****