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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Appeal No. 2016-000259

RECORD ON APPEAL

Jerry Hogan ..... Respondent.

v.

Corder & Sons, Inc. ..... Appellant

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013-CP-32-03076

Jerry Hogan	Corder and Sons, Inc.
PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

000003

Hon. J.

Circuit Court Judge	2138 Judge Code	1/19/2016 Date

For Clerk of Court Office Use Only

This judgment was entered on, and a copy mailed first class or placed in the appropriate attorney's box on 1/27/16 to attorneys of record or to parties (when appearing pro se) as follows:

Bradd W. Bunce 2821 Millwood Avenue/P.O. Box 1698
Columbia, SC 29202

Jonathan R. Hendrix 206 East Main Street/P.O. Box 849
Lexington, SC 29071

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/ KPK

Court Reporter

Beth Carrigg Lexington County Clerk Of Court - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Defendant's Motion for Judgment Notwithstanding the Verdict or, in the alternative, for a New Trial is hereby denied. Defendant's request for a hearing on its motion is respectfully denied.

FILED
2016 JAN 22 A 11:
BETH CARRIGG
CLERK OF COURT
LEXINGTON, SC

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
Jerry Hogan, Plaintiff, v. Corder and Sons, Inc., Defendant.	)	Civil Action No.: 2013-CP-32-03076 **VERDICT FORM**

1. Was the defendant negligent?
   ✓ YES - Go to Question 2
   _____ NO - Stop deliberations

2. Was the defendant's negligence a proximate cause of the plaintiff's injuries?
   ✓ YES - Go to Question 3
   _____ NO - Stop deliberations

3. Was the plaintiff negligent?
   _____ YES - Go to Question 4
   ✓ NO - Go to Question 7

4. Was the plaintiff's negligence a proximate cause of the plaintiff's injuries?
   _____ YES - Go to Question 5
   _____ NO - Go to Question 7

5. Using the combined negligence that proximately caused the plaintiff's injuries as one hundred percent (100%), what percentage of that negligence is attributable to the plaintiff and what percentage is attributable to the defendant? [The percentage must add up to 100%. It is not necessary for each defendant to be assigned a percentage of negligence. It is perfectly acceptable for a defendant to be assigned a zero percentage (0%).]

   Plaintiff _____%

   Defendant _____%

Total _____%

-Proceed to Question 6

6. Was the plaintiff's negligence greater than fifty percent?
   _____ YES - Stop deliberations
   _____ NO - Go to Question 7

7. Please state the amount of damages, if any, sustained by the plaintiff. [Do not reduce the plaintiff's total damages based on the percentage of negligence by any party. After you have answered these questions, the judge will compute the amount of damages for which the defendant is responsible based on the percentage of the defendant's negligence which you have decided proximately caused the plaintiff's injuries. You are to determine only the total amount of the plaintiff's damages and enter that amount below.]

   $ 864,341.80 Actual Damages

   $_____ Punitive Damages

_____
Foreperson

January 6, 2016
Lexington, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
		CASE NO.: 2013-CP-32-03076
Jerry Hogan,	)	
	)	
Plaintiff,	)	**NOTICE OF MOTION AND MOTION**
	)	**FOR JUDGMENT NOTWITHSTANDING**
v.	)	**THE VERDICT OR ALTERNATELY**
	)	**FOR A NEW TRIAL**
Corder and Sons, Inc.,	)	
	)	
Defendant.	)	

TO: BRADD W. BUNCE, ESQUIRE, ATTORNEY FOR PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through his undersigned counsel, shall move before the Honorable D. Garrison Hill, who was the presiding Judge of the Court of Common Pleas for Lexington County, Eleventh Judicial Circuit, during the trial of the above-captioned matter, such place as the court may direct, on the 10th day after the service hereof or at such other time as Counsel may agree or the Court may order, for an Order granting this Defendant Judgment Notwithstanding the Verdict or, alternately, for a new trial on the grounds that there is no sufficient legal or factual basis to support the jury's findings of liability against the Defendant in this case. Particularly, Plaintiff did not provide any evidence of Defendant's negligence in the design, maintenance and/or use of the modified forklift that is the subject matter of this litigation, nor did Plaintiff provide any explanation as to how the modified forklift failed.

Additionally, this lack of evidence as to what caused the front end loader, capable of holding three times the weight of the SUV it was holding, to not hold the SUV safely forced the jury to have to base its decision that Defendant was liable upon speculation, surmise and conjecture which is not permitted under South Carolina law.

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Further, the jury's verdict of liability against Defendant without any comparative negligence on behalf of the Plaintiff in light of the overwhelming evidence that the reason the front end loader did not hold the SUV was because of the manner in which Plaintiff set it up or operated the loader (without permission or instruction) indicates that passion, prejudice or some other improper motive or factors influenced the jury's decision.

Further still, the jury's decision in light of the lack of proof or explanation of how the front end loader come to not safely hold the SUV would mean the unrecognized theory of *res ipsa loquitur* had an important part to play in this verdict and must not be allowed to stand.

Lastly, there is a failure of proof that any act or omission of the Defendant was factual and/or legal proximate cause of Plaintiff's injuries.

Said motion shall be based upon the sworn testimony and/or exhibits presented at trial and other arguments that may be heard at the hearing on this matter together with such legal authorities that may be presented at the hearing on this matter.

WILLIAMS, HENDRIX, STEIGNER & BRINK, P. A.

BY: Jonathan R. Hendrix

Jonathan R. Hendrix
206 East Main Street
P.O. Box 849
Lexington, SC 29071
(803) 359-1550
ATTORNEY FOR DEFENDANT

#2

LEXINGTON, SOUTH CAROLINA

January 15, 2016

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COPY

FILED
2013 SEP -6 P 2:05
BETH A. BARWICK
CLERK OF COURT
LEXINGTON COUNTY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF LEXINGTON)	FOR THE ELEVENTH JUDICIAL CIRCUIT
)	
Jerry Hogan,)	CASE NO.: 2013-CP-32-____
)	
Plaintiff,)	
)	
v.)	**COMPLAINT**
)	
Corder and Sons, Inc.,)	(Personal Injury)
)	(Jury Trial Requested)
Defendant.)	
)	

2013CP3203076

The Plaintiff alleges:

A. PARTIES

1. The Plaintiff, Jerry Hogan, is a resident of Lexington County, South Carolina.

2. The Defendant, Corder and Sons, Inc., is a corporation organized under the laws of South Carolina, with a principal place of business in Lexington County, South Carolina.

B. JURISDICTION & VENUE

3. The Court has jurisdiction over this case and these parties under S.C. Const. art. V, § 11.

4. Venue is proper in Lexington County because the acts and/or omissions occurred in this county, which is also the county of the Defendant's principal place of business, under the common law of South Carolina and S.C. Code Ann. § 15-7-30 (Supp. 2005).

C. FACTS

5. On or about February 18, 2011, the Plaintiff was working at the Defendant's principal place of business at 3626 Pond Branch Road, near the Town of Leesville, Lexington County, South Carolina.

6. Plaintiff was removing a part from a sport utility vehicle (SUV) at the Plaintiff's

direction.

7. The SUV was lifted from the ground by a front loader previously modified by Defendant to function as a forklift.

8. The Defendant had caused the bucket from its front loader to be removed and forks to be installed in its place.

9. The only other potential support for the dangling SUV was a single piece of metal wedged between the ground and either the forks or the SUV.

10. Plaintiff was working under the SUV, which was suspended overhead.

11. Suddenly and without warning, the SUV fell directly onto the Plaintiff from above, resulting in significant physical injury to the Plaintiff.

D. FOR A FIRST CAUSE OF ACTION
(Negligence)

12. Plaintiff realleges here the paragraphs above as if restated verbatim.

13. This collision was caused solely by the Defendant.

14. The Defendant had a duty to provide a safe workplace for Plaintiff, to exercise due care in designing lifting equipment and supports, and to exercise due care in training Plaintiff in techniques to safely work under suspended loads. The Defendant, through its agents' and employees' actions and omissions, breached its duties.

15. Plaintiff's injuries and damages were caused by the Defendant's negligent, careless, or reckless conduct in one or more of the following ways:

(a) Defendant directed Plaintiff to work under a raised load without the load being secured;

(b) Defendant failed to warn Plaintiff of the dangers involved in working under a raised load;

(c) Defendant failed to train Plaintiff in procedures, techniques, or the equipment necessary to allow safe work under a raised load;

(d) Defendant failed to maintain a workplace which is free of recognized hazards which may cause death or serious physical harm, in violation of SC Reg § 71-112A;

(e) Defendant designed a modification to the front loader that allowed it to be used in an unsafe manner for which it was never intended;

(f) Defendant designed and constructed a support mechanism that was inadequate to safely support the raised loads for which it was intended;

(g) Defendant failed to provide adequate supervision or any means of warning of a shifting load suspended above the Plaintiff; and

(h) Defendant failed to exercise that degree of care which a reasonably prudent person would have exercised under the same or similar circumstances.

16. As a direct and proximate result of the aforesaid acts or omissions of the Defendant, the Plaintiff suffered significant physical injuries; his injuries were of such a nature as to require him to expend monies for hospitalization, doctors' care, and other medical necessities, and he will have additional medical expenses in the future; he has suffered and will continue to suffer physical impairment; he lost time and earnings from work and will lose earnings in the future; he was subject to extreme pain, mental anguish, suffering and discomfort over a long period of time and will suffer the same in the future; he suffered alteration of his lifestyle; and he was unable to pursue many of his usual avocations in the past and will continue to suffer the same in the future, thereby being deprived of the enjoyment of life, all to his damage in an appropriate amount.

E. PRAYER

FOR THESE REASONS, Plaintiff asks for judgment against Defendant for the following:

a. Actual damages in an appropriate amount;

b. Punitive damages in an appropriate amount;

c. The costs of this action; and

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d. All other relief the Court deems appropriate.

FILED
2013 SEP -6 P 2:05
BETH A. GARRICK
CLERK OF COURT
RICHLAND COUNTY

Respectfully submitted,

Green Law Firm, LLC

Bradd W. Bunce
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August 19, 2013
Columbia, South Carolina.

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COPY

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON)	
Jerry Hogan,)	2013 NOV -5 A 11: 06
)	Civil Action No.: 2013-CP-32-03076
Plaintiff,)	
)	BETH A. CARRIGG CLERK OF COURT LEXINGTON SC
vs.)	ANSWER
)	
Corder & Sons, Inc.,)	
)	
Defendant.)	

The Defendant, Corder & Sons, Inc., answering the Complaint of the Plaintiff would respectfully allege and show unto this Honorable Court as follows:

FOR A FIRST DEFENSE
(12(b)(6))

Defendant would show that Plaintiff has failed to allege facts sufficient to constitute a cause of action against Defendant; therefore, Plaintiff's Amended Complaint should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE
(General Denial)

1. Defendant denies each and every allegation of the Plaintiff's Complaint not specifically admitted, qualified, or explained.

2. Defendant admits that jurisdiction and venue are proper within this Court.

3. Defendant admits the allegations contained in paragraph five (5) insofar as they allege that Plaintiff worked at Defendant's business on February 18, 2011, but denies that Plaintiff was working at the direction of Defendant at the time of Plaintiff's alleged injury.

4. Defendant admits the allegations contained in paragraph eight (8).

5. Defendant denies all other allegations contained in Plaintiff's Complaint.

FOR A THIRD DEFENSE
(Absence of any Accident or Injury)

6. Defendant adopts and realleges each and every allegation set forth above as if fully repeated herein.

7. Defendant alleges that there was no accident nor any injury to Plaintiff at the time and place noted in Plaintiff's Complaint.

8. Defendant further alleges that Plaintiff intentionally caused the SUV to fall, then positioned himself near the SUV to make it appear that he might have been hit by the vehicle. Defendant then began calling for help.

FOR A FOURTH DEFENSE
(Acts of Others)

9. Defendant adopts and realleges each and every allegation set forth above as if fully repeated herein.

10. Defendant alleges that if any damages were sustained by Plaintiff, and the existence of such alleged damage is denied, said damage was proximately caused by the intervening and superseding intentional conduct or acts of negligence or wrongdoing of third persons over which Defendant had no control; therefore, Defendant is not liable, and Plaintiff's claims against this Defendant are barred.

FOR A FIFTH DEFENSE
(Comparative Negligence/Gross Negligence/Recklessness)

11. Defendant adopts and realleges each and every allegation set forth above as if fully repeated herein.

12. Even if Defendant was negligent in any respect, which is expressly denied, and such conduct operated as a proximate cause of Plaintiff's damage, if any, which is expressly

denied, Defendant alleges Plaintiff's negligence, grossly negligent, reckless, willful and wanton conduct contributed more than fifty percent (50%) to the cause of the incident, and therefore, Plaintiff's claims are barred as to this Defendant.

13. If it is determined that Plaintiff's negligence, carelessness, recklessness and gross negligence is equal to or less than the negligence of Defendant, then the amount of recovery available to Plaintiff should be reduced by the percentage of Plaintiff's own negligence, carelessness, recklessness and gross negligence.

FOR A SIXTH DEFENSE
(Sole Negligence of Plaintiff)

14. Defendant adopts and realleges each and every allegation set forth above as if fully repeated herein.

15. Defendant alleges that any injury or damage sustained by the Plaintiff, and the existence thereof is expressly denied, was due to and caused by the negligence, carelessness, wantonness, willfulness and /or recklessness of Plaintiff, combining, concurring, and contributing with the negligence, carelessness, wantonness, willfulness and/or recklessness, if any, on the part of Defendant, without which negligence, carelessness, wantonness, willfulness, and /or recklessness on the part of Plaintiff, said alleged injury and damage would not have occurred or been sustained. For that reason, Defendant is not liable to Plaintiff in any sum whatsoever.

FOR A SEVENTH DEFENSE
(Failure to Mitigate Damages)

16. Defendant adopts and realleges each and every allegation set forth above as if fully repeated herein.

17. The Plaintiff failed to mitigate his damages, thereby barring recovery.

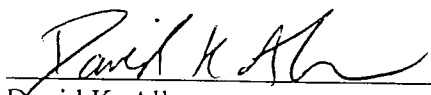
FOR AN EIGHTH DEFENSE
(Open and Obvious)

18. Defendant adopts and realleges each and every allegation set forth above as if fully repeated herein.

19. Defendant would show that if any defect or dangerous condition existed, which is expressly denied, such condition was open, obvious, and readily apparent to Plaintiff. Therefore, Defendant is not liable to Plaintiff whatsoever.

WHEREFORE, having fully answered the Complaint of the Plaintiff, Defendant prays that the Amended Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

WILLIAMS, HENDRIX, STEIGNER & BRINK, P.A.

By: 

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Lexington, South Carolina

November 4, 2013

THE COURT: Yeah, I mean y'all can agree on it.

MR. HENDRIX: I'm sure it will come out in the testimony any how.

MR. BUNCE: Right.

THE COURT: He was 46?

MR. BUNCE: He is 51, sir.

THE COURT: He is 51 now. Okay.

(The jury entered the courtroom at 1:27 p.m.)

THE COURT: All right. Good afternoon. We're going to proceed with the case and the presentation of evidence.

And you may call your first witness.

MR. BUNCE: The plaintiff calls James Harold Corder.

JAMES HAROLD CORDER,

having been duly sworn, testified as follows:

THE CLERK: If you'd have a seat and state your name for the record.

THE BAILIFF: Say your name?

THE WITNESS: My name is James H Corder.

DIRECT EXAMINATION

BY MR. BUNCE:

Q Mr. Corder, you own all the stock in Corder and Sons, Incorporated; is that correct?

A You'll have to talk a little loud because I got an

ear problem.

Q All right. Mr. Corder, you own all the stock in Corder and Sons, Incorporated; is that correct?

A Yeah.

Q All right. And you're the only corporate officer; is that correct?

A Do what?

Q You're the only corporate officer; is that correct?

A Yeah. Right.

Q All right. And you're, when was your business incorporated?

A When was what?

Q When was your business incorporated, sir?

A Corder and Sons.

Q Yes, sir. What year?

A '94.

Q All right. And before that, were you in the used car business?

A Yeah, Corder Used Cars.

Q Okay. And sometime before you incorporated in 1994, you began running a salvage yard; is that correct?

A Yeah.

Q And that salvage yard is located over at 3626 Pond Branch Road?

A Right.

Q -- in that area; is that correct?

All right. Now on those 12 acres, you have a bunch of wrecked cars?

A Yeah.

Q And your business is to sell parts from those cars; is that correct?

A Right.

Q And you buy wrecked cars from the auctions?

A Yeah.

Q And then you bring them back to here on your own roll-back truck; is that right?

A Yeah.

Q And once they arrive back, you have your employees take off the catalytic converters and batteries and tires; is that right?

A Yes, and get the gas out of them.

Q Okay. And then you take the cars out onto the yard; is that correct?

A Yeah.

Q All right. And what do you use to take them out on the yard?

A This 924 Cat.

Q Okay. So that's a Caterpillar Loader? That's a Caterpillar?

A Yeah.

Q And this Caterpillar, it has forks on it instead of a bucket; is that right?
A It had a bucket when I bought it.
Q Okay. I'm going show you what's been marked as Plaintiff's Exhibit 1. Is that the Caterpillar we're talking about?
A Yeah.
Q Okay. Is this the Caterpillar here; is that correct, sir?
A Yeah.
Q All right. Now when did you buy that Caterpillar?
A '97 or '98, I don't remember just which it was.
Q Okay. And when, when you bought it, it was a regular front-end loader; is that right?
A It was a regular what?
Q Front-end loader?
A Yeah.
Q It had a bucket on it; is that correct? It had a bucket on it?
A Yeah.
Q All right. And then you bought the forks that are shown here from another company; is that right?
A I had them made.
Q Okay.
A Manufactured it.

Q You bought them from another company?
A Yeah.
Q All right. And you installed them yourself; is that correct?
A All you had to do is put the pin in where the bucket pinned.
Q Okay. But this -- this Caterpillar, it wasn't designed as a forklift, was it?
A It wasn't originally, it had the bucket on it.
Q Before you bought the Caterpillar, you actually had a regular forklift, correct?
A Yeah.
Q Okay. Now, let's talk about these work. A Cat -- this front-end loader here, it has two big arms, doesn't it?
A Yeah.
Q And those actually raise and lower --
A With cylinders.
Q Yes. And those raise and lower the fork lift; is that correct?
A Yeah, they raise and controlled inside the cab.
Q Yes, sir. And then it has in the center here, it has another cylinder that controls the tilt of the forks; is that correct?
A Yeah, the forks.

A Right.
Q Okay. But if you're going to pull a motor, you bring the whole car or truck up by the garage; is that correct?
A Right.
Q And so you would drive the Caterpillar out in the yard, pick it up and bring it up by the garage?
A Yeah.
Q And when your employees needed to work under a car or a truck, you would lift it up on the forks; is that right?
A Yeah.
Q And they would stand there under the car or truck while they worked; is that correct?
A Yeah, a 5-inch shaft stood up under it where it couldn't drop.
Q Okay. But you depended on the hydraulics to hold that -- that vehicle up in the air, didn't you?
A But it's never did.
Q Pardon?
A All these years, it's never dropped.
Q Okay. But the -- but you were depending on the hydraulics to hold it that day?
A Well, it was just a safety device.
Q Okay. Well, what was the safety device, sir?

A Well, the axle out from under a house trailer with a 5-inch-steel pipe.

Q I'm going show you what's been marked as Plaintiff's Exhibit 16.

I'll give you a moment, sir, we'll get everybody on the same page here.

All right. I'll tell you what, rather than messing with that for a moment. May I see that photo? All right. This is the -- this the axle you're talking about, sir?

A Yeah.

Q All right.

MR. BUNCE: May I publish this to the jury, Your Honor?

THE COURT: You may.

BY MR. BUNCE:

Q This is the axle we're talking about.

Now what was, what was supposed to happen with the axle, Mr. Corder?

A Underneath the fork.

Q Okay. It's supposed to go underneath the forks.

And that's -- that's from a mobile home; is that correct?

A Yeah.

Q And so you'd have your employees stick one end of it into a wheel on the ground?

the end of the tines?
A No.
Q We're talking about two feet here?
A From the pins on the tractor.
Q Okay. And -- and then the loader would actually lower the forks onto that axle; is that correct?
A Do what?
Q Well, once they're holding up the axle, it's not going to stand up by itself, is it?
A If you knew how --
Q Okay.
A -- to sit it in that wheel, it would sit by itself.
Q All right.
A But usually we put it under there.
Q All right. So one person --
A Lord, it's been there so long. Usually when we was working.
Q Okay.
A Of course at that time, there wasn't nobody supposed to been back there.
Q Right. So what I'm asking about is your procedure for this. One employee would hold that in place and then you would lower it onto the fork --
A Sit it on it, yeah.
Q Okay. Now, on the bottom side of those forks,

A Yeah.
Q And your son was not working there during the week, correct?
A Right.
Q And you were running the Caterpillar; is that correct?
A Not that day.
Q Okay. But you would, was it your procedure that you always run the Caterpillar?
A Well, the other boy didn't drive it. The one that's been there 27 years, he wouldn't drive no equipment.
Q Okay.
A So Bubby or myself always run it.
Q Okay. Now, you were talking about an employee that had been there 27 years, right?
A Yeah.
Q That would be Mr. W.C. --
A And he's there now.
Q All right. Was he working for you in February of 2011?
A No, he had retired.
Q Okay. So in February of 2011, it was you and Mr. Hogan, correct?
A Yeah.
Q Okay. And my question for you is that during that

time, you always ran the Caterpillar, isn't that right?
A We had what?
Q During that time February of 2011, you always ran the Caterpillar; isn't that right?
A Not always. Sometimes he'd run it.
Q Okay. Getting ahead of ourselves, you had, you're aware that Jerry generally knew how to run a loader?
A He'd been running it. He run it when he worked there before.
Q Okay.
A He had worked there with Bubby before.
Q But anytime there was something being done with it in February of 2011, it was you running it, wasn't it?
A Yeah, and him.
Q And him?
A And him.
(Mr. Bunce opened Mr. Corder's Original Deposition.)
BY MR. BUNCE:
Q All right. Well, Mr. Corder, do you recall that we took your deposition back on May 19th, 2014?
A May the 19th when?
Q 2014, we took testimony from you; do you recall that?
A You --

Q You recall that?
A Yeah.
Q Okay. You were sitting in Mr. Hendrix office, correct?
A Yeah.
Q Okay. And do you remember you were under oath that day?
A Remember what?
Q Do you remember you were under oath that day?
A Yeah.
Q All right. And do you remember I asked you a series of questions then? You remember me asking you questions, sir?
A Yeah, I remember you asking questions.
Q I show you your page, page 57 there. We've been talking about Jerry and who ran the Caterpillar, right?
A No, I don't, because he weren't supposed to be there then.
Q Okay. All right. But we're talking about in 2011, February, 2011, and I asked you a question about it, about you showed him how to use that particular one and in answering that, you said but anytime there was something to be brought down or something, I always do it; is that correct?
A Say what?

Q Is that correct, is that your testimony then, sir?
A What?
Q What I just told you?
A I don't remember.
Q Let's look at what the page says, sir. Looking at the top of page 57, here, starting that first line, we're talking about the loader here, right? Anytime there was something to be brought down or something, I always do it; is that your testimony, sir?
A If he asked me.
Q Okay. Was that your testimony?
A Well that day, he wasn't supposed to be there that afternoon.
Q Okay. But was that your testimony then, sir?
A There weren't supposed to be nobody back there.
Q Was that your testimony in 2014, sir?
A I don't remember that.
Q Okay. Do you dispute that this is what you said that day?
A Was I what?
Q Are you disputing that's what you said that day, sir?
A No, I'm not.
Q But today you're saying today that sometimes it was you and sometimes it was Mr. Hogan; it wasn't always you;

is that your testimony today, sir?
A I don't remember that.
Q Well, I'm asking you today, what is your testimony? Is it that sometimes Mr. Hogan did it and sometimes you did it?
A Hold it up.
Q No, drove the Caterpillar?
A I don't understand what you mean.
Q I'm asking you sitting here today, is it your testimony that sometimes Mr. Hogan drove the Caterpillar and sometimes you drove the Caterpillar?
A Right.
Q All right. Now, do you believe this system you set up with the loader and axle was safe?
A Yeah, it was, you don't want to pick it up.
Q And you believe that because the axle was strong; is that correct?
A No, I ran over it with that big tractor and you can't bend it.
Q Okay. Actually you started using the axle as a backup only after the hydraulic cylinder cracked on the forklift that you used before the Caterpillar; isn't that right?
A Yeah. You put it under that fork and you couldn't let it down unless you moved the tilt.

Q Okay. And before that, you had folks working underneath forks without any kind of backup; is that correct?
A I had that axle for years. I don't know long they used it before I went there to run it myself. The whole time Bubby was there they used it.
Q Okay. But that axle only came into use after the hydraulics broke on the forklift before, correct?
A No. Never broke no hydraulic.
Q On the forklift?
A Right on the --
Q Massey Ferguson Forklift?
A Well, it hadn't been run in 10 years.
Q All right. And that's what you had before the Caterpillar, correct?
A Yeah, still got it.
Q And the cylinder cracked on that forklift, correct?
A No, it wasn't nothing but that axle; same thing.
Q Did the fork -- did the cylinder crack on the forklift that you had before the Caterpillar?
A It had parts on it, yeah.
Q Did the cylinder crack?
A Yeah, the cylinder cracked on it.
Q Okay.
A But he wasn't working there.

Q All right. And before the cylinder cracked, you didn't use that axle, did you?
A Yeah.
Q I'm sorry, yes?
A But it -- it wouldn't --
Q Did you use that axle before the cylinder cracked?
A Yeah, I always used it.
Q Do you remember when I -- when I asked the questions at your deposition and I asked you if the axle; so was that something that came in as soon as you got the caterpillar and you told me that the forklift had cracked --
A Now, I don't know how long they used it now. They used it before I -- the boy went to work at the Caterpillar place, the axle.
Q Okay. Well, didn't you tell me that that's, that when it cracked, that's when they started using the axle?
A They've always used the axle.
Q I show you page 36 here of your deposition, sir. All right. And I'm going show you starting at line 2 and I started the question, When you were still -- and your answer was because the forklift, when they, the cylinder cracked on it and so they got this thing and started using it; that was your testimony back in 2014, correct?
A Did what now?

Q All right. And you weren't working for Corder and Sons during that period of time?
A No, not at the shop. My son ran it for 17 years and he's been gone about approximately 10 I'd say because he had been at the Caterpillar place.
Q Okay. But you knew --
A And I bought this big tractor before he left there.
Q Okay. But you knew your employees were using that axle?
A They did.
Q And you knew that the forklift had cracked, the cylinder?
A Yeah.
Q And you knew that at some point, the axle started being used?
A Yeah.
Q Okay.
A They don't come with no locks on them.
Q I'm sure. And your belief that this, that the axle caused it to be safe was based on the strength of the axle; is that right?
A That's why I used it.
Q All right. Now prior to setting up your salvage yard, you never took any courses on how to do that, did you, on how to set up a salvage yard?

A Ain't nothing to it, just keep it level when you pick it up. That's what two levers is on it for.
Q Okay. Well, I'm backing you up a little bit, sir. Before you started running a salvage yard, did you look into how you ought to run a salvage yard?
A I don't remember or I didn't work there until after he left anyway.
Q Well, where did you -- where did you learn how to run a salvage yard?
A My working for my foster dad.
Q Okay.
A When I was a kid.
Q All right. And he ran a salvage yard?
A I worked in the Model T days.
Q Okay.
A I believe I had enough experience.
Q Okay. And he ran a salvage yard?
A He didn't; I did, but he always did mechanical work.
Q Okay.
A That's where I learned it at.
Q All right. When you decided you were going to open a salvage yard, did you take any courses anywhere?
A All I did was just keep buying to fix up what I sold.

Q Okay.
A And it ended up, I just got too big for that so I just put in a salvage yard.
Q Right. Did you read any books on how you ought to set up a salvage yard?
A No, I didn't need to. I had enough experience.
Q All right. And you never had a safety officer; is that correct?
A No.
Q Okay.
A But I taught safety. I tried to do what I knowed would hold to keep from getting hurt.
Q Okay.
A When that boys been there 27 years, he'd never been hurt.
Q And you taught safety based on your own experiences?
A What?
Q You taught safety based on your own experiences; is that correct?
A Yeah.
Q Okay. You had any training? You didn't have any training in rigging, did you?
A Well, when I was in service, I worked in the garage.

Q Okay. And what type, what kind of garage operations did you use?
A Automobiles, trucks, motorcycles.
Q Okay. And what years was that?
A 1945 in World War II.
Q Yes, sir. And then you set up your salvage yard in about '94 or so?
A No. About '70 I imagine, somewhere's along in there. Let's see, I was in, my wife died in '73 and I, yeah, around '70. I was in it when she passed away in '73.
Q Okay. You haven't had any training in designing safety apparatuses, have you?
A No, I had 70 something years training; 80 something really.
Q That's through your own life experiences?
A Through what?
Q Through your own life experiences?
A Yeah.
Q Okay.
A Well, I had a foster dad to teach me.
Q Yes, sir. And you personally trained your employees; is that right?
A Yeah.
Q All right. You didn't have a formal training class, did you?

A I can't understand you.
Q Pardon?
A I didn't hear you. You don't --
Q All right. You didn't have a formal training class, did you?
A Well, I got enough in service during the war.
Q Okay. But for your employees, when you hired an employee, did you sit him down in a classroom and go over some books and things?
A Well, most of it I already offered the equipment.
Q Okay. You didn't have any videos you showed them on safety, did you?
A No.
Q Now, Jerry Hogan worked for you, correct?
A Yeah.
Q All right. He actually worked for you two different times, right?
A At what time?
Q He actually worked for you two different times; is that right?
A Yeah, he worked for the boy the first time.
Q All right. And that's Robert?
A Yeah.
Q All right. And Jerry worked for the company for a while in the early 2000's?

A You got me there. I just really don't know what year he worked the first in.
Q Okay. And he left on his own; is that right?
A Right.
Q You didn't fire him?
A No, never fired a man.
Q Okay. And then in 2010, you hired him again; is that right?
A Bubby did.
Q Okay. And that's your son?
A Or I guess it was '10. I don't know when it was.
Q Okay. Well it was a few months before -- before he got hurt in February of 2011, right?
A I don't know that.
Q Okay. All right. He was a good employee, wasn't he?
A He was what?
Q He was a good employee, right?
A Yeah.
Q Okay. And Jerry did what you told him to do?
A He did work where?
Q He did what you told him to do, correct?
A Yeah.
Q Okay. And you, you trained him --
A Now, a lot of it, he did on his own though, that I

didn't tell him to do.

Q All right. Your company trained him to do his job the first time, right, the first time you hired him?

A Well, you'll have to ask Bubby; he worked for him. I wasn't there.

Q All right. Well, did you conduct any training when he -- he got hired the second time in 2010?

A No, I just did it to help him out. He was in trouble needing the money.

Q All right. Did you give Jerry --

A He and Bubby dealt together then. I didn't do it.

Q Did you give Jerry Hogan any training in 2010 when you rehired him?

A Well, the years he worked there he got training.

Q Okay. And that was through your company, correct?

A Yeah.

Q Okay. And Mr. Hogan, he pulled parts for you, yes?

A Yeah.

Q And you had some rental homes too, correct?

A Yeah.

Q All right.

A A little, not too much. Just little minor things. Somebody would call and they'd have a problem and he'd help out with it.

Q All right And Mr. Hogan --

A A water leak or something.
Q Sure, he did some maintenance work on those rentals?
A It wasn't no job, he just did it on his own. I paid him straight time.
Q Okay. So he did some maintenance work on your rental homes too, correct?
A On what?
Q Mr. Hogan, he did maintenance work on your rental homes, correct?
A A little problem like a water leak or something, he'd go by because he worked with a man with pump before he worked for me.
Q Okay. Now, Mr. Hogan, from the first time he worked for you, he was familiar with your procedure for using the front-end loader and the axle, correct?
A I guess so.
Q All right. Now getting on to February 18th. All right. He was working for you that day? For Corder and Sons?
A He wasn't supposed to be after noon when I paid him.
Q Okay. Well let's get into that. So he was pulling a motor that day, correct?
A I have idea. He told me that morning he came to

work that he wanted to paid by dinner, that he had to go pull out a motor for a man and so I thought he was gone. I didn't even know he was on the property.

Q You didn't know he was on the property that day?

A No, he was supposed to have went home to pull out a motor for a man he told me and I paid him like he said at dinner time.

Q All right. So you believed that he was gone?

A Certainly.

Q And the first time, when was the first time you, you knew he hadn't left?

A When he made the noise.

Q Made what noise, sir?

A When he hollered.

Q Okay. All right. Do you recall what he did that morning?

A Yeah.

Q What did he do that morning?

A We were there working that morning and when noon time came, I gave him his check like he wanted.

Q Okay. Well, was that an unusual thing for you to pay your employees at noon?

A Yeah.

Q That was unusual?

A I paid them usually on Friday evenings.

Q So it was unusual --
A Yeah.
Q -- to give him pay at noon?
A I did it because he asked me to.
Q All right. Had he told you that there was a motor there that had been sold --
A No.
Q -- for your business?
A He had mentioned a motor to me. The only thing he said he had to go pull out a motor for a man.
Q All right. Did you hear the loader running that day?
A No, I didn't.
Q All right. Now, shortly before you heard him yelling, was there anyone there?
A Do what?
Q Was there anyone there in your -- on your premises shortly before you heard him yelling?
A I was sitting in the shed there about 30 foot from where he was.
Q Okay. Did you have any customers there?
A Two ladies.
Q Okay. And that's Natasha Renee Smith and her mother; is that correct?
A Yeah.

Q All right. And Renee was actually your tenant; is that right?
A They was actually what?
Q She was your tenant; she rented a home from you, correct?
A No, they didn't rent; they just lived in one.
Q It was your home, Corder and Sons?
A Yeah, it was a mobile home.
Q Okay. And she was living there?
A Yeah.
Q Okay. And she was there that day to make payments on a car?
A Well, that's what, I thought she was; she didn't make one after all the excitement, but her and her mother was there and she was making payments on the car.
Q Okay. You're saying that the first time that you knew Mr. Hogan was there was when you heard him hollering for help?
A Yeah.
MR. BUNCE: Will you give me a moment, Your Honor?
THE COURT: Sure.
BY MR. BUNCE:
Q Mr. Corder, are you having a hard time remembering what happened that day?
A Well, I'm no baby.

other worker?
A No.
Q You don't remember that?
A No, I didn't see it come down.
Q Okay. And --
A Didn't hear it either.
Q -- all right. I asked you, Well, you heard the loader and what's the next thing you knew; do you recall, you told me that you went out and saw Mr. Hogan?
A Yeah.
Q All right.
A When he hollered; that's the first time I knew he was out there.
Q Okay. All right. I want you to look at line 11 on page 64 there, sir.
Mr. Corder, I want you to look at line 11 on page 64 there?
A On what?
Q Line 11. Okay. It came down. Well you heard the loader and what's the next thing you knew? The answer, this was you talking, Well I walked out there one time and he was piddling around there. I didn't see him doing nothing; he was just piddling around and I went back in there where the ladies was. Do you remember giving that testimony, sir?

A I didn't say that.
Q All right?
A I didn't say nothing about he was piddling around. I never saw him after that.
Q All right. And you don't remember the SUV being there by Mr. Hogan?
A Who?
Q You don't remember the SUV being out there behind, behind your garage when you went out to check on Mr. Hogan; you don't remember that?
A Yeah, I went out. Me and the lady went out there.
Q Okay. But before he got injured, you remember the SUV being there?
A I didn't go out there. I didn't know he was back there.
Q Okay. You remember me asking you was the SUV there?
A No, I think they a lot in here nobody else won't remember. I don't remember you asking me nothing like that. It's always been that. I didn't know he was there.
Q Mr. Corder, you had given testimony back on May 19th, 2014. Do you believe your memory in 2014 was more accurate than today?
A Was I accurate?
Q Was your memory in May of 2014 more accurate than

A On the loader.
Q All right.
A Resting against the forks of the motor.
Q I'm going to show you Plaintiff's Exhibit 10, sir. All right. So that's what we're looking at, this picture up here, sir?
A This picture wasn't made then.
Q Okay. But I'm going to ask you a series of questions --
A This car was laying up on the forks and the forks was not on the ground.
Q Okay.
A It was laying up on its side; it wasn't on the wheels.
Q All right then. Now is this the SUV?
A That's not it. That's the car and the tractor, but it wasn't in that position.
Q Okay. All right then. So it looked a little bit different out there; it looked different out there when you went out there, correct? It looked a little, it looked different than this picture, correct?
A Yeah.
Q All right.
A Altogether different from that.
Q All right.

A The forks was still under the car and it was laying on its side.
Q All right. Now I'm going to -- I'm going to tell you that your attorney sent me this picture. Okay. Now, do you know where this picture came from?
A I don't know where this one came from.
Q Okay. All right. But that is the SUV that was out there that day, correct?
A Yeah.
Q All right. And you know what year SUV that is? That's a Suburban. Correct?
A Yeah.
Q And is that a '97 Suburban, sir?
A I don't know just what year it was.
Q Now, how was the scene that you saw out there different from this picture, sir?
A What?
Q How was the scene that you saw out there different from this picture?
A Much different than this.
Q Okay. Tell me how, sir?
A Well, it was still on the forks, leaning on the forks and they were not on the ground and it was up about four foot high and the forks tilted just enough for it to slide down on its side.

Q Okay. The SUV was on its side?
A Yeah.
Q All right. The SUV was laying on its side on the ground?
A Yeah, on the driver's side laying on the forks underneath part of this track. The truck was on the forks; it wasn't off like that.
Q So the forks were tilted; is that correct?
A Yeah.
Q But the forks were higher off the ground and not tilted at as much of an angle?
A Back here in the pen they were about four foot and we always picked it up six foot to put the axle under it and it was down, let down about two foot and then it tilted until that car slid down off the forks.
Q Okay. And when you came out there after you heard him calling for help, Mr. Hogan was out there by that SUV; is that correct?
A No, he was back towards the wheel of the tractor laying on the ground facing the SUV.
Q Okay. And that's the point when you tried to pick him up?
A Yeah.
Q All right. Did he say anything to you?
A We didn't do anything. She couldn't pick up her

A That's the first time I ever remember him wanting to get paid at noon.
Q Okay. What about your other employees; you didn't pay them around noon?
A There wasn't nobody else there that day.
Q All right.
A But I always paid off on Friday afternoons, no certain time, but it would always be in the evening.
Q All right. Do you remember when I asked you was it normal -- we were talking about Mr. Hogan. And I asked you was it normal for you to pay him at noon time.
A No.
Q All right. Reading page 62 there, line 5, I want you to read along with me, Mr. Corder, can you do that?
A What's that?
Q Can you read along on page 62 there, sir?
A Which one?
Q Page 62, line 5 and I asked you was it normal for you to pay him at noon time and you answered yeah, I paid them --
A Well, I didn't understand your question then.
Q And your answer was, I paid them, a lot of them on Friday so they could go get it cashed, you know. Was that your answer back in 1994, sir?
A Yeah, I paid them, a lot of them in Fridays so they

Q Okay.
A And no tools there so he couldn't have been working on it.
Q Okay. Well, let's, can we agree that if you had that built that the SUV wouldn't have slid off -- off the forks?
A Possibly not. It wouldn't have fell off no way if somebody hadn't let them down.
Q If it was on the stand, correct? It wouldn't have slid off if it was on a stand?
A Whoever was back there; somebody let them down. The axle didn't fall out from under there.

MR. BUNCE: That's all the questions I have at this time, Your Honor.

THE COURT: Mr. Hendrix.

MR. HENDRIX: Your Honor, for the record and to make it more complete, I would like to publish a part of Mr. James Harold Corder's deposition from page 56, lines 8 through 12.

THE COURT: Go ahead.

MR. HENDRIX: Question: Now was Jerry, was he allowed to use the Caterpillar?

Answer: Yeah, he run it some; very little. One of us usually run it, like Mr. Porter.

///

CROSS-EXAMINATION

BY MR. HENDRIX:

Q We're doing this a little unusually since Mr. Bunce has called you first. I haven't had a chance to ask you questions and let you sort of introduce yourself to the jury. So that's what I want to do now if it's okay with, Your Honor.

How old are you?

A 89.

Q When's your birthday?

A Last of December.

Q And I believe you've already indicated that in your lifetime you served in military service during World War II?

A Talk a little louder, Mr. Hendrix.

Q I'm sorry.

MR. HENDRIX: In fact, Your Honor, can I move this a little closer?

THE COURT: Sure.

(The podium was moved closer to the witness stand.)

BY MR. HENDRIX:

Q I think maybe most people are having an okay time hearing me.

A Most people are not 89.

Q That's true. And I -- I've got in hearing aids

right now and I'm wondering what is going to happen in the future with me too.

What branch of the service did you serve in?

A Navy.

Q And how long were you in there?

A Two years.

Q When did you get out?

A When the war was declared over.

Q Okay. How long have you lived in Lexington County?

A 89 years.

Q Okay. And a couple of weeks?

A And a couple of weeks.

Q Where did you go to school?

A I went to country school through the seventh grade, Poplar Springs near where I live and then I went to Gilbert High.

Q You graduated from Gilbert High?

A Yeah.

Q How old were you when you went into the Navy?

A I lacked one month even being 18.

Q Okay. When you got out of the service, I think you've already told the jury that during the time in the Navy, you worked on -- did mechanic work as part of your service; is that correct?

A Right.

Q When you got out, what kind of work did you do?
A Same thing.
Q And when did you start -- I believe you sort of got into fixing up cars in the used car business; is that right?
A Yeah.
Q When did that happen?
A In '46, I got out in May of '46.
Q Okay. And I think you said you continued that on up until the time that you got or accumulated enough cars that you kind of by default got into the salvage business?
A Yeah.
Q Is that right? Is that right?
A Yeah.
Q Okay.
A Me and the oldest boy. He was wanting to come home and go to work. He worked in Columbia at City Garage.
Q Okay. And is your oldest boy, Robert, and he's also known as Bubba or Bubby?
A Yeah.
Q When he came home and starting doing that, what did you do after that?
A I went to work in rental houses.
Q Okay.
A I went in the house and land business.

Q Okay. And your son, Robert or Bubby, he ran --
A Ran the business.
Q -- the salvage business?
A Yeah.
Q And he ran that for something like I believe you said 17 years?
A 17 years.
Q And during the first time that Mr. Hogan would have worked there, did he work there with Bubba?
A Yeah.
Q And was he initially trained by Bubba?
A Yeah.
Q And when he came back there to work the second time, Bubba had already gone to work for the Caterpillar people. What's the name of the place he works?
A Blanchard's.
Q Blanchard. And so you would be there some during the week then; is that correct?
A Yeah.
Q Now, did Mr. Hogan anytime around February the 18th of 2011, which I believe is the date of this accident, anywhere around there, did he ever ask you what the price of an engine was going to be? Ask you, not anybody else.
A Not that I remember.
Q Okay.

A Usually he was around there when I was talking to people, you know, over the telephone.
Q Okay.
A He could possibly hear me tell them.
Q Did you or your son -- well those -- you and your son, Bubba, the ones that were to quote the prices on the engines?
A Yeah, we usually give what each other asked.
Q Okay. On the day all of this -- whatever happened, did you bring an SUV down from the field?
A No.
Q Not at all?
A No.
Q Who was the only person there that was there to bring it down with the loader?
A Just those two ladies.
Q And was Mr. Hogan there?
A Yeah. Yeah.
Q The two ladies didn't operate that loader, did they?
A No, they were sitting there in the shed with me.
Q Okay. So you didn't bring the SUV down or help him bring it down?
A No.
Q And I believe it was a Suburban; is that correct?

A That's right.
Q And you didn't help him set one up either, did you?
A No.
Q Had you told him to do that?
A No, for he told me he was going to do it for another man. He didn't tell me he was going do it at my property.
Q Whatever he intended, you understood that he was to leave, that you thought he was going off your place --
A Correct.
Q -- and help somebody else remove an engine?
A That's what he said.
Q Now, after this, after he hollered and y'all went out there and saw him and everybody came and everything else, had the, before that moment, had there been any problems with the forks or the lifting device on that Caterpillar loader?
A Never. It was a good machine; anybody need a good equipment, Caterpillar.
Q Now since then, since then -- I mean I'm talking about from anytime that it would have been used after Mr. Hogan left in the ambulance -- has it given you any problems with the forks or the lift? The lifting arms, these --
MR. HENDRIX: Excuse me, Your Honor. And I don't

know how to use that and I can't see it anyhow.

BY MR. HENDRIX:

Q This is Plaintiff's Exhibit 9. I'm going to call it these yellow lifting arms. Now, I don't know what the correct term is, but you see what I'm talking about?

A Yeah.

Q And the forks are on the end of it; is that correct?

A Yeah.

Q And these lifting arms lift it up and the forks, you can tilt them --

A Yeah.

Q -- some either way. Has either one of them given -- given any problems since the time that Mr. Hogan left in the ambulance?

A Nor before.

Q Neither one?

A No.

Q Okay. Now, I'm not sure if this is the exact picture he was using; I can't remember the exhibit number that he gave, but it's your belief that these pictures were not taken the day of the accident, but later; is that correct?

A Yeah.

Q Now, let me ask you this, back when this happened,

your son, oldest son, Bubba or Robert, was not working there during the week?

A No.

Q He was working at Blanchard?

A Yeah, right.

Q But on the weekend, on Saturday, he would come and work there?

A Yeah.

Q Do you know of your own knowledge whether or not the Saturday following this event on February the 18th, 2011, I believe that was a Friday?

A Yeah.

Q That on the very next day, do you know of your own knowledge whether or not Bubba used this loader to move something?

A I would think so.

Q Okay. So you're pretty sure that it was used and not left in this position after the Saturday came?

A That morning when he came.

Q Right. I think you've already covered that nobody ever came to buy the engine out of the SUV?

A No, never called.

Q Is it true that Ms. Smith, Natasha Renee Smith, and her mother -- I believe her mother's name is Becky -- came to the shop right about the time or maybe just after you

had given Mr. Hogan his check, somewhere in there?

A Yeah, it was at noontime; I wouldn't say the exact time.

Q Right.

MR. HENDRIX: Begging the Court's indulgence?

THE COURT: Yes, sir.

(There was a brief pause.)

BY MR. HENDRIX:

Q Is it true, Mr. Corder, that usually when a car was going to be lifted up to be worked on underneath and the, the mobile home axle was put up underneath the fork of the loader, that usually that was a two-person job?

A Usually.

Q One person inside operating the controls on the loader and one person out there holding it and making sure it's straight up?

A Yeah, but you could do it by yourself.

Q Right, but it was hard?

A It wasn't easy.

Q And so usually if somebody was around --

A Yeah.

Q -- you used two people?

A Yeah.

Q But you didn't help Mr. Hogan set this up?

A No.

Q At all?
A No.
Q Now, let's talk about this. Was that loader fully capable of holding that SUV up; was the Caterpillar loader strong enough to hold up the SUV?
A Two of them.
Q It could hold two of them?
A Yeah, for I've hauled two at the time and stacked one on the other one.
Q So that wasn't, the load wasn't the problem?
A No.
Q All right. Did you ever see any evidence of any kind of failure or breakdown of the loader after this with Mr. --
A The only thing, the battery.
Q Okay. But not that day?
A No, I put batteries in it.
Q All right. But I'm saying have you seen any evidence --
A No --
Q -- was there any evidence out there that this machine had broken down that caused the forks to tilt?
A Nothing has ever been done to it.
Q So right afterwards, when you went to use this, the forks worked just fine?

A Yeah.
Q The lifting arms as I call them, I'm sure there's another name for them --
A Worked good yesterday.
Q Worked good yesterday, and it worked good right afterwards?
A Yeah.
Q And those have not been repaired even since 2011?
A Nothing's ever been done to it.
Q Now, do you know whether or not --
MR. HENDRIX: Your Honor, I'm referring to Plaintiff's Exhibit Number 9.
BY MR. HENDRIX:
Q In the position that this is in, that is the lifting arms, as I call them, are raised and the forks tilted. Do you know of any way to get it to do that other than use the levers and make the forks tilt down? Is that the only way you know of?
A That's the only way is to use the controls.
Q Okay. That's not an accidental thing; that's not the way it would happen if something accidentally happened?
A So far; so good.
Q Right. It hasn't happened yet with that?
A No.
Q Okay.

MR. HENDRIX: Your Honor, I don't believe I have any further questions at this time.

THE COURT: Redirect?

MR. BUNCE: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. BUNCE:

Q Mr. Corder, Robert, your son, he was your employee when he trained Mr. Hogan the first time, correct?

A What?

Q Bubba, he was your employee, correct? He was Corder and Sons employee --

A Yes, sir.

Q -- at the time he was training Mr. Hogan the first time, correct?

A Yeah.

Q Okay. Now, I want to be sure I'm absolutely correct and understand your position here. You're saying, your position is that what's in that transcript is not what you said that day in 2014; is that right?

MR. HENDRIX: Objection, improper redirect.

THE WITNESS: No, it don't read that way.

THE COURT: Overrule.

THE WITNESS: Somebody added something to it.

MR. BUNCE: All right. That's all the questions I have?

having trouble seeing that.

THE COURT: Sure. Right.

MR. HENDRIX: It's not the projector's fault. I think it's just the lighting, it being the light's fault.

THE COURT: Okay. Well, let's take about 5 minutes and crank back up.

Thank you. I appreciate it.

(A brief recess was observed.)

THE COURT: All right. We ready for the jury?

MR. BUNCE: One moment, Your Honor. My client's in the restroom.

THE COURT: Okay. It would be hard to start without him.

(Mr. Hogan entered the courtroom.)

THE COURT: Okay. Bring the jury in.

(The jury entered the courtroom at 3:08 p.m.)

THE COURT: All right. Yes, sir, you may call your next witness.

MR. BUNCE: If it please the Court, I call Jerry Hogan.

THE CLERK: Raise your right and place your left on the Bible?

JERRY HOGAN,

having been duly sworn, testified as follows:

THE CLERK: Have a seat and state your full name

for the record, please?

THE WITNESS: My name is Jerry Garland Hogan.

DIRECT EXAMINATION

BY MR. BUNCE:

Q All right. Mr. Hogan, where did you grow up, sir?

A I raised out in Roanoke, Virginia, but I live in Leesville.

Q Okay. And where did you go to school?

A Gilbert High School.

Q And did you graduate there, sir?

A Yes, sir.

Q Okay. And are you married?

A Yes, sir.

Q All right. How long you been married?

A The 14th of this month will be 10 years.

Q Okay. And who's your wife?

A Melinda Hogan.

Q All right. Is she seated here in the courtroom?

A Yes, sir.

Q Okay. And do you have any children?

A Yes, sir.

Q All right. Who are your children?

A I got one named Christian Elliott found out he was my biological son; and I got a daughter 8 years old and I got one 5.

Q All right. Did you do them in a -- did you work from a crane? Or how did you do that?

A Worked from a bucket truck or a crane.

Q Okay. All right. And you said you worked for Corder and Sons?

A Yes, sir.

Q How many times did you work for them?

A Two. Twice.

Q Okay. Now the first time, when did you start for them?

A Around the summertime.

Q Okay. Do you remember what year it was?

A No, I do not.

Q Okay. About how many years ago was it?

A Probably been about 8 years ago.

Q Okay. How long did you work for them that first time?

A A year.

Q Okay. And why did you stop working for them?

A The weather.

Q What do you mean?

A Sometimes it'd be raining and cold.

Q All right. Did you work for anyone else in between times you worked at Corder?

A I worked at Mid-state Auto Auction.

Q Okay. All right. And then the second time you worked for them when did you start?
A Around August.
Q Okay. And how did you get the job that second time?
A Bubba kept on coming to my house asking why I went home.
Q Okay. All right. And when you started back at Corder and Sons, what did you do for them?
A Pull motors or transmissions.
Q Okay. And how much were you paid, sir?
A Like $6 an hour.
Q All right. And what, what hours did you normally work?
A I worked from 8:30 sometimes it was 6 o'clock.
Q Okay. What days did you work?
A Monday through Friday; on Wednesdays I worked half a day and I worked at Mid-state Auto Auction driving cars in the auction block.
Q Okay. So you worked at Mid-state Auto Auction too?
A Yes.
Q All right. All right. Now that second time, who else worked there with you?
A Just me and Harold.
Q And what did Mr. Corder do?

A He ran the front-end loader like if I needed a motor or transmission, he'd bring it down to me.

Q Okay. And we heard testimony that he's 89. Was he out there pulling parts?

A No, sir.

Q That was you?

A Yes, sir.

Q How many times did you pull engines when you worked for Corder and Sons?

A Basically I pulled about three.

Q All right. And what was the procedure for pulling an engine in general?

A A guy buys a motor and, you know, he'll want to hear it run. I crank it up and he says I want that motor and he says how much you want for it and I tell him different prices.

Q Okay. And if he wanted to buy it, what did you do?

A I get a deposit on the motor and then I pull it.

Q Okay. What was the procedure for pulling the motor?

A Somebody might have a bum motor in their car.

Q Okay. How did you go about pulling the motor there at Corder and Sons?

A I work underneath -- gut top end with sockets and ratchets and break the bolts loose. Then raise the bottom

end, crank it up, raise that up, put the mobile home axle up underneath it to hold it up and I get up underneath.

Q Okay. So is this something you did out in the yard?

A Yes.

Q And did you do it out where all the cars are stacked out there?

A No, behind the house.

Q So you brought it in by the garage?

A Yes, sir.

Q Okay. And -- and you said something about the top end; what do you mean by the top end?

A Getting the bolts out, taking the gas line and linkage --

Q All right. And --

A -- and wiring harness.

Q -- the top part of the motor, the engine?

A Yeah.

Q Okay. And then the bottom part, what do you mean by that?

A The rest of the exhaust, torque converter bolts, and the rest of the valves and bolts.

Q Okay. All right. Now, long did it normally take to do the top part of the motor?

A I can do one in approximately about 30 to 40

minutes.

Q Okay. And then the bottom?

A It depends on how rusty the bolts are. Sometimes it'll take about an hour because you have to -- I didn't want to break the studs off in the manifolds.

Q Okay. All right. Now, this process that you use there, who taught you that?

A I learned it on my own. And plus I went to Job Corp to try to get my high school diploma or GED and I didn't get it so I got some -- I got like a diploma in auto mechanics.

Q Okay. All right. Now the part, you said there was a part about raising the vehicle up?

A Yeah.

Q All right. Who taught you that part?

A I worked with S & D Grading, run heavy equipment.

Q Okay. Well, I'm talking about when you worked at Corder and Sons?

A Right.

Q All right. And you said that you had to raise up the --

A The vehicle with the forklift.

Q Okay. You use a forklift. All right. And you said something about an axle there?

A Yeah.

Q Right. Where did you learn about the axle?
A Bubba they told me I need the support to help stabilize the weight.
Q Okay. That was something that they taught you?
A Yes.
Q They, being Corder and Sons?
A Yes.
Q Was any of that your idea?
A No.
Q Did you have any concerns about it?
A I was at issue that somebody was going to get hurt.
Q Okay. Did you say anything to Mr. Corder about that?
A Yes, I said we need to build something safer before someone gets hurt.
Q All right. And what did he say about that?
A He didn't say much of anything.
Q Okay. Did the axle seem strong to you?
A Yeah.
Q All right. Now, did you operate the loader there at Corder and Sons?
A No, sir.
Q Okay.
A I'd crank it up and let it warm up or if I'm finishing pulling out from underneath -- I'd crank it up

and let it down.
Q Okay.
A I did operate it up in the field or nothing.
Q Okay. Do you remember when your -- when your injury occurred?
A November the 18th, 2011.
Q Okay. What day of the week was this?
A It was on Friday.
Q And how did you get there that day?
A I drove -- I had a '95 Bonneville. I drove it to work and when I -- February 18th that year, that's when I broke my back and the ambulance came and got me. Renee and her mama called the ambulance on me.
Q Okay. The Bonneville that you drove that day, that's -- that's an automobile?
A Yes, sir.
Q All right. Is that two or four doors?
A It was four door.
Q Okay. But it's not a pickup truck?
A No, sir.
Q All right. You had a pickup truck?
A Yes, sir.
Q Okay. What kind of pickup truck did you have?
A I had two of them.
Q Okay. What kind did you have?

A I had a 81 and a half with 3-speed on the column.
Q Excuse me, 81 and a half what?
A Pickup.
Q What manufacturer?
A Chevrolet.
Q Okay. All right. What was the other one?
A A Z71.
Q Okay. Who makes that one?
A Chevrolet.
Q All right. What year was that one?
A '91.
Q All right. When you got there that Friday, what were you going to do?
A I was waiting until I get a call to see if anybody needed any parts.
Q Okay. And at some point, did you -- something come up with a motor?
A Like I say, someone called me for a motor, I give him a price and then I asked him does he want it and he says yes, so I pulled it.
Q Okay. Did you sell the motor that Friday?
A Yes. Yes, I did.
Q Okay. What was --
A The boy came at two o'clock -- no, it was at noon. I didn't finish getting it out.

Q Okay.
A About 2:30 I was on my way to the hospital.
Q All right. So what time did you start pulling the motor that day?
A Right after lunch and that was at 12.
Q All right. And this was a motor for a customer of Corder and Sons?
A Yes, sir.
Q All right. Do you know about what time you finished with the top half of the engine?
A I was finished with the top end about one o'clock.
Q Okay. And what did you do when you finished the top end?
A Told Mr. Harold I needed to do the bottom, the bottom end.
Q Okay. And what did he do?
A He cranked it up and raised it up for me and I put that axle, mobile home axle up underneath it.
Q Okay. Did you -- the way you put it there that day, was it any different than any other day?
A No.
Q Did you do it the way you'd been taught?
A Yes, sir.
Q Was it supported by anything else that day?
A Just the mobile home axle and the forks.

Q Okay. Did Mr. Corder stay to help?
A He wanted to go watch the news.
Q Okay. Now, that day where was the -- the -- the SUV? Where was it positioned at on the forks?
A What do you mean?
Q All right. Was the -- the forks, were they -- were they towards the front, towards the back of the vehicle, in the middle of the vehicle?
A In the center of the fork.
Q And how far did the forks go in on the SUV?
A They went all the way through to the other side.
Q Okay. So the -- I'm going to show you Plaintiff's Exhibit 1 here. All right. You seen this before?
A Yes, I have.
Q All right. And is that the loader we're talking about?
A Yes, sir.
Q Now looking at this loader, was the -- was the SUV back here by this guard or was it out to the end of the forks?
A It was in the middle.
Q Okay. So it was centered on the forks. Okay.
All right. I want you to look through Exhibits 2 through 8 here and tell me if that's -- that's the same -- that -- that Caterpillar loader that you used that day; are

those all accurate?
A Yes.
Q Okay. Now that day, how high was the -- were the forks?
A All the maximum, 5'4".
Q Okay. I'm going to show you Plaintiff's Exhibit 9 here. Have you seen this one before?
A Yes.
Q All right. Give me a moment and let's all get on the same page here. All right. This is what we're talking about, right, Mr. Hogan?
A Yes.
Q This one up here on the screen?
A Yes.
Q All right. You said that it was about 5'4" off the ground?
A Yes, sir.
Q All right. Now, this photograph, does this accurately depict what was going on out there that day?
A There was tires on it.
Q There were tires on the SUV?
A Yes.
Q Okay. As far as the way it's tilting there, is that like it was out there that day?
A No.

Q Okay. How's it different?
A Because when the tires weren't on it; it was straight.
Q What do you mean it was straight?
A The forks was down and going straight across.
Q Okay. This is before you got hurt, right?
A Yes.
Q Okay. Now, where was the axle at on there?
A It was up straight to be on the front axle.
Q Okay. And we're talking about the mobile home axle, right?
A Right.
Q All right. It -- you're saying it was on the front one?
A Yes, sir.
Q Okay. If you'll look over here with me, Mr. Hogan?
A Okay.
Q Are you talking about the one that's the closest to the front of the vehicle?
A Yes.
Q Okay. And then from the pivot point here where the guard is, coming down this way about how far down that fork was the axle?
A When it lays flat --
Q Yes, sir?

A -- it'd be towards the front of the motor. It'd be about a foot back.

Q Okay. All right.

MR. HENDRIX: Your Honor, I'm sorry, I didn't quite hear that; did he say about a foot and a half?

BY MR. BUNCE:

Q You said it was about a foot back?

A Yeah, from the axle underneath on the fork.

Q Okay. But it was the, the mobile home axle was out here under the fork about a foot from the -- this end?

A No, sir, all the way underneath the vehicle. When the fork is going underneath the vehicle.

Q Okay. How -- how far was the axle from the point where you stood out there?

A When I'm up underneath, I can touch it with my hand.

Q Okay. Did you?

A No, sir.

Q All right. When did you first notice there was a problem out there?

A The way it was leaning.

Q Okay. What was leaning?

A It was looking like it was about to slide off. The fork looked like it was going to come out from underneath.

Q Okay. What was about to fall off?

A It looked -- the way it was tilting, you know, because it was rocking.
Q Okay. The SUV was rocking?
A Yeah.
Q Okay. All right. And just before the SUV fell on you, did you hit that axle?
A No, sir.
Q And just before the SUV fell on you did you brush against the axle?
A No, sir.
Q Did you touch the axle at all?
A No, sir.
Q Did you do anything to cause that SUV to fall on you?
A No, sir.
Q What part of you did it hit?
A The -- I was underneath it. The point I didn't hear it because of the sand and it pushed me from my head straight down.
Q Okay. And what happened to your body when that hit you?
A It crushed my back.
Q All right. And how did you move?
A Renee and her mama pulled me out.
Q Okay. But when it hit you on the head, how did

your body move?
A It knocked me out.
Q Okay. And when you came to, what did you feel?
A I had to get out from underneath.
Q Okay. You were on the ground?
A Yes, sir.
Q All right. Did you feel any pain at that point?
A Yes, sir, I was in severe pain with my back.
Q Okay. And were you able to move out from underneath it?
A No, sir.
Q All right. Well, actually let me step back a little bit; were you underneath it?
A Yes, sir.
Q How much of you was underneath it?
A My whole body.
Q Okay. And which way were you facing so to speak?
A I was facing towards the road.
Q All right. I think there's only two of you that know the layout out there so the road would have been which way?
A It'd be, let me see. It would have been a straight, be facing that way.
Q Okay. Facing out toward the front of the SUV?
A Yeah. No, it'd be facing where that block building

A I couldn't move my legs.
Q You couldn't move your legs?
A No.
Q What did that make you think about?
A About am I all right.
Q Okay. Did you have any idea how bad you were hurt out there?
A No.
Q All right. What happened when the ambulance showed up?
A They started cutting my clothes off and checking to make sure no bones was sticking through my skin.
Q Okay. And they put you on something?
A They put me on a backboard.
Q Okay.
A And took me there from Mr. Harold's place to Lexington Hospital.
Q Okay. And that backboard, how were you held on to it?
A Straps. They strapped me down.
Q All right. What could you see during that ride?
A All I seen they were doing -- doing -- checking my blood pressure and stuff like that.
Q All right. How long did that ambulance ride take?
A I don't know. It seemed like a long time.

Q Okay. So it was at least 5'4" off the ground?
A Right.
Q And I think you said after the accident I believe you said that there were tires or something -- anyway, the forks weren't all the way on the ground?
A No, it had tires on it.
Q Okay. But the fork had tilted some, but they didn't go down and touch the ground? That's right? Is that correct?
A Yes.
Q Okay. So if this makes it -- if it -- and I really -- my eyes aren't that good, but if it's touching the ground then that's wrong on the photo because the forks didn't make it all the way to the ground on February the 18th?
A That's correct.
Q Okay. And the car was sitting on top of the forks; is that correct?
A That's correct.
Q Okay. Now, I believe that you said that you were somewhere -- and I'm not clear on where that is. I want to get that cleared up -- when you saw -- and I'm trying to look back at my notes. You saw that something began to leaning and rocking, and I guess it was maybe the SUV or --
A That's when the pole kicked out and then it --

Q I'm sorry; say it again?
A That's when the pole kicked out and I couldn't get out and it was rocking back like a teeter totter.
Q All right. I'm trying to get this straight. What was rocking?
A The SUV.
Q The SUV was rocking. Is it your testimony that something kicked the tires out, but the -- at that moment the forks were still pretty much straight?
A Yes.
Q And that after that, it's your testimony that something that caused them to tilt, at least part of the way down?
A When it came down.
Q When you say it came down, they tilted; is that right?
A No, sir, it just stayed flat. Until it get certain part down to the ground and when the tires start touching the ground, that's when it came, you know, like that; like a 45 degree.
Q Well, what I'm trying to figure out is, and this is my understanding. You're not saying that these yellow arms came down, you're saying the forks came down?
A That's correct, with the SUV.
Q With the SUV. But the arms, these yellow arms --

and I don't know what they're really called, they were probably about that position; is that correct?

A Yeah.

Q Approximately in that same position?

A The forks was straight out.

Q The forks were straight out; okay. Do you have -- I would be terrible at this, I got to tell you. But do you have any way of estimating how high that yellow arm is off the ground?

A No, sir.

Q Well, I can't either, but it looks like it would probably be 5 feet off the ground or maybe, maybe a little more; maybe a little higher than the base of the forks?

A Well, the bottom of the forks is up in the air and these two tires up under it, it would be 5'4".

Q Right and what I understand you to say is you're not saying that this part down back here where the forks attached came down; you're saying that the forks came down?

A Yes.

Q Okay. All right. And were you close enough when you -- another thing too, I think I heard you say and I wanted to make sure of this. When this was over, which side of this SUV were you on? Were you on the loader side or were you on the building side, the shed side? When it was over; whenever the thing happened and you came to and

you realized something had happened?
A The passenger side.
Q I'm sorry; say it again?
A The passenger side.
Q Which side?
A The passenger side.
Q Passenger side of the SUV?
A Yes.
Q Okay. So you were up under the forks?
A Yes.
Q And the forks were about at a 45 degree angle?
A They came down.
Q Where had you been when you say the -- the -- the axle, the brace, kicked out? Where were you standing whenever that took place?
A Right there in front; I'll show you.
Q Excuse me?
A All right. When it was straight across; I was on this side right here, in the middle.
Q All right. Let me put my finger here. Are you saying that you would have been standing right about there?
A Yes.
Q Now, that would have made you under the SUV when it was level; is that right?
A Yes.

Q Okay. That's where you are -- you were when you said it hit, it fell; is that correct?
A That's correct.
Q All right. Now I think you said that you had -- and again, I want to make sure I'm clear on this -- you put -- you were the one in charge of putting the axle up under it right?
A Mr. Harold ran the loader.
Q Right. And you put it up under the far end -- when I say the far end, about where I'm touching in here, somewhere in there, about a foot or so from the end of the -- of the fork?
A From the fork, yes, sir.
Q So a foot and, maybe, you know, 18 inches whatever, roughly in there --
A Yes.
Q -- from the end of the fork?
A Yes, sir.
Q Okay. And were you the one that took the little -- the little tire -- the spare tire that's not a real tire; did you, are you the one that put it down in the ground?
A No, sir, it was there.
Q It was already there?
A Yes, sir.
Q Was it in the spot that you use or did you move it

to put it up under the fork?
A It was, I didn't move it at all; it was there.
Q Okay. You've seen Mr. Harold and others drive the -- the loader with heavier loads than that SUV on it, haven't you?
A Yes, sir.
Q So there's no question that the loader would hold the weight of the SUV?
A That's correct.
Q And that's even if and, it may be dangerous to do this, but even if you didn't put the axle up under it, it's actually strong enough to hold it?
A It'll hold to a certain point and then it'll come down.
Q All right. Have you ever seen it come down before?
A Yes, sir.
Q Was it on this one or another one?
A Another one.
Q Not this one?
A No, sir.
Q This one is much bigger than the other fork lift they had; is that correct?
A Yes, sir.
Q This is a heavy duty thing we're talking about; is that correct?

A Yes, sir.
Q In fact you probably could put two SUV's on it and lift them if you wanted to, couldn't you?
A I don't know.
Q If you wanted to?
A I wouldn't done it.
Q I understand, but you've driven heavy equipment before, haven't you?
A Yes, sir.
Q And you have driven and moved around at least some. This --
A Not Mr. Harold's, no.
Q You never moved it?
A No, sir.
Q Okay.
A I worked at S&D Grading. I worked there for four and a half years. I ran dozier's and all sort of dump trucks and stuff like that.
Q And you knew how -- you would know how to run this machine?
A Yes, sir.
Q Okay. Now, you mentioned the SUV we're talking about here that's on the -- is that the same one in the picture?
A Yes, sir.

Q Do you believe that's the same one that was on there when all this happened ---

A Yes, sir.

Q -- on February the 18th?

And you said somebody said they were going to buy it?

A They bought the motor.

Q Who paid the deposit for the motor?

A A guy called me on the phone. I don't know his name. All I know he lived in Batesburg.

Q All right. Wait a minute. I thought you said when Mr. Bunce was talking to you that the procedure was that somebody had to come in and pay a deposit?

A Yeah, a deposit. He came and got the deposit and he asked me when you think it'll be ready and I said around twelve o'clock.

Q All right. So he came and gave you the deposit?

A Yes, sir, and I gave Mr. Harold the money.

Q Okay. And how did you know how much the motor was worth?

A Bubba -- I called Bubba and asked him.

Q Okay. When? That day?

A Yes, sir, I called him on his cell phone. I had a cell phone and I called him at his work and asked him how much he wanted for it.

the right position.

Q You said not in the right position; what do you mean?

A The center because if you ain't got it in the center, it's going to teeter totter. It can slide off.

Q If what's not in the center?

A The forks.

Q In the center of what?

A The SUV.

Q Okay. Did you see anything that made you think it wasn't in the center before you --

A No, sir.

Q Okay. So you're saying that, but you don't know that that's what caused it because you didn't see anything wrong from that from standpoint?

A No.

Q And you didn't see that any of the hydraulic lines had broken or anything, did you?

A No, sir.

Q And you don't know that any of the metal on the forks or things that connected to the -- to the yellow arms as I call them -- you didn't see any evidence that the metal had broken?

A No, sir.

Q You actually didn't see any evidence that any of it

broke except you knew, you're saying that it came down?
A Yes, sir.
Q Well, you were the one that lined up the pole and put it up under the fork?
A Yes, sir.
Q Okay. Whether or not you drove it down there and did the lowering --
A I didn't.
Q -- you were the one that lined up the, the pole, the axle -- the axle under the fork?
A Yes, sir.
MR. HENDRIX: Your Honor, beg your indulgence for one moment.
THE COURT: Yes, sir.
BY MR. HENDRIX:
Q Mr. Hogan, do you remember back on October the 30th of 2014, you came to my office and gave a deposition?
A No, sir.
Q You don't remember that?
A No, sir.
Q You don't remember coming and a young man -- I didn't do it, but a young man in the office asked you a bunch of questions and his name was Mr. David Allen; does that sound familiar?
A No, sir.

Q You don't remember anything about that?
A No, sir.
Q Okay. You can't remember coming to take the deposition and that was in 2014, right?
A I don't remember.
Q You don't remember it at all?
A No, sir.
Q Okay. You don't -- as far as you know, as far as your memory allows you to know, you never gave a deposition; is that what you're saying?
A That's correct.
Q But you remember what happened on the 18th?
A Yes, sir.
Q Okay. I'm going to ask you the same question that your lawyer asked Mr. Corder, wouldn't your memory had been better on the 14th about what happened than it would have been in 2011?
A Not really. I remember was I woke up and I was going to the hospital.
Q Well, there was nothing wrong with you. I'm going to submit to you, and ask your attorney to stipulate that he did, in fact, show up at our office and give a deposition on or about October the 30th of 2014?
MR. BUNCE: Absolutely.
///

BY MR. HENDRIX:

Q All right. Your attorney remembers it. Are you still saying you don't remember it?

A That's correct.

Q Okay. And do you remember it -- so you don't remember saying in your deposition where you were sworn to tell the truth, that some guy called you on Wednesday about a motor and was supposed to come back on Thursday about it. You're saying you don't remember that?

A All I remember is he called and needed a motor and I asked him for what. And he said he's got a '97 Suburban and needed a 350, and it was a Vortec.

Q A what now?

A A Vortec.

Q I'm sorry, I don't know what that is.

A It's a motor.

Q Okay. Okay. If you were correct in 2014 that the man contacted you on a Wednesday about a motor and was supposed to come back on Thursday, do you have any idea why you were taking the motor out -- wait until Friday to take the motor out?

A Because he was waiting to come up with the money to get it.

Q Oh, okay. So do you remember the guy calling on Wednesday?

A It wasn't a Wednesday, it was a Thursday.
Q Okay.
A Late Thursday afternoon before we closed.
Q All right. So now you're telling me he called you on a Thursday?
A Yes, sir.
Q And just before you closed, he called you?
A Yes, sir.
Q He didn't show up?
A No, sir.
Q Did he ever show up on Friday or did you not see him --
A He came that Friday.
Q What time did he come?
A Lunch time.
Q Okay. Same time you were getting your check?
A Yes, sir.
Q Okay. Why had you wanted your check at lunch time on Friday?
A Because I had to pay my lot rent.
Q Okay.
A Because it's due the 5th of every month. If I'm a day late they charge me $5 per day.
Q Okay.
MR. HENDRIX: May it please, Your Honor, this is

the original -- in fact, if it would make it easier rather than me ask him to read it, is it okay if I just publish that part from his deposition on page 51 -- excuse me, I may want to go to the previous page, start on the previous page? Starting on page 50, line 17 through page, page 51 line 21, if we can do it that way, Your Honor.

This is from the deposition, Your Honor, of Mr. Jerry Hogan taken Thursday, October the 30th, 2014, at my offices at 206 East Main Street in Lexington.

THE COURT: Okay.

MR. HENDRIX: I did not take the deposition, David Allen, a lawyer in my office did at the time.

THE COURT: Yes, sir.

BY MR. HENDRIX:

Q Question: All right. The time with the Explorer, was that close to when, when you pulled, you were trying to pull the motor on the Suburban?

Answer: Yes.

Okay. How did -- in thinking about the customer with the Suburban, did you meet that person?

Answer: Yes, they came to the junk -- they came to the junk yard.

Okay. What day did he come to the junk yard?

It was on a Wednesday.

Okay. And that was -- was that the Wednesday

before your accident?

Answer, yes.

The question was: Okay. All right. And that Wednesday, was that when you called Bubba?

Answer: Yes.

Okay. And did the customer say he wanted it?

Answer: Yes.

Okay. When was he supposed to come back?

Thursday afternoon.

Okay. All right. So that -- what day was it you were, you started pulling the motor for the Suburban?

That Thursday -- that Wednesday after lunch.

Now you don't remember at all giving us that testimony?

A No, sir.

Q All right. Do you deny that that's an accurate description of what you said?

A No, sir.

Q Okay. So you probably did say that?

A No, sir.

Q You think you didn't say that?

A No, I did not say that.

Q Okay. All right. Even though the court reporter took it down that way, you said you think it's not right?

A Yes.

Q Okay. Now did you call, have an occasion to call Bubba and ask him specifically about a similar motor for your truck?
A No, sir.
Q You never did that?
A No, sir.
Q Okay. Do you remember doing anything like that a week or two before?
A No, sir.
Q You don't remember doing that?
A No, sir.
Q Okay. If Bubba said he remembered you specifically did that, would you trust his memory?
A No, sir.
Q Okay.
A Because a Vortec -- the heads and intakes different on a throttle body.
Q All right.
A But the block's the same.
Q Now, as I understand what you described, something -- now nobody was in the, in the loader when you were about to get under the car, were they?
A No, sir.
Q And while you got under that, suddenly it started rocking and leaning on its own; is that right?

A Yes, sir.
Q And after that, you're saying that the -- the metal axle got kicked out from under it somehow or other and that it tilted part of the way down letting the SUV slide onto the ground?
A It didn't slide all the way to the ground.
Q The SUV didn't slide all the way to the ground?
A No, sir.
Q And the forks didn't go all the way to the ground either?
A When the vehicle came down, when it came down, it landed on the tires.
Q Okay. The SUV landed on the tires?
A Yes, sir.
Q The forks didn't go all the way to the ground?
A No, sir.
Q Okay. You had seen the axle used before; is that correct?
A Yes, sir.
Q And it held loads didn't it?
A Yes, sir.
Q What -- why would you have cut on the loader while Mr. Harold was inside talking to the Smith ladies; why would you have had an occasion to cut on the motor of the loader?

A I didn't do it.
Q Okay. Are you saying you didn't do it or you don't remember doing it?
A I did not do it.
Q Okay.
MR. HENDRIX: I don't think I have any further questions, Your Honor.
THE COURT: Okay. Redirect?
MR. BUNCE: No redirect, Your Honor.
THE COURT: All right. Mr. Hogan, you can step down, sir.
THE WITNESS: Okay. Thank you.
THE COURT: Thank you. What are y'all going to do about --
MR. BUNCE: Your Honor, we have that video of Dr. Barwick that would fit in -- it will take a few minutes to set it up.
THE COURT: All right. We've got a short video. They tell me it's 16 minutes long. Do y'all want to take a break while he sets it up or just stay right where you are?
A JUROR: We're ready to go ahead.
MR. BUNCE: Your Honor, I am literally setting up this DVD player so -- no pressure.
THE COURT: No pressure.
Okay. If there's something you need to tell me,

NATASHA SMITH

after being duly sworn, testified as follows:

THE CLERK: If you'll have a seat and state your full name for the record please.

THE WITNESS: Natasha Smith.

DIRECT EXAMINATION

BY MR. BUNCE:

Q All right. Ms. Smith, do you know Harold Corder?

A I do.

Q All right. How do you know Harold Corder?

A I was renting a mobile home from him and buying a Blazer from him.

Q Okay. You know Jerry Hogan?

A I do.

Q How did you come to know Jerry Hogan?

A He would bring -- do the work to the mobile home I stayed in and he would be up at the shop working on cars whenever I come to make my payments.

Q Okay. And so when you made payments on your vehicle, you would take it to, to Corder and Sons Office?

A I would.

Q Okay. And February 18th, 2011, that's -- you're familiar with the incident that we're about to talk about I believe?

A I am.

A Not really.
Q Okay. All right. How long had you been there before Mr. Hogan came in?
A I'm guessing, 15, 20 minutes.
Q Okay. And did you hear any of the conversation between Mr. Hogan and Mr. Corder?
A Not really. I heard them talking, but I can't tell you what all was being said.
Q Okay. All right then. And then Mr. Hogan, did he leave the office?
A He walked out.
Q Okay. And after that what happened?
A We were, me and my mom and Mr. Corder were standing out there talking inside the side of the office, the carport, and we heard something and I -- we heard Jerry hollering, screaming help me, help me; and we all ran around through the office and out the side of the building and a big SUV had come down on top of him and he was down on the ground.
Q Okay. Any idea how much time passed between when you saw Mr. Hogan and when that SUV came down?
A It probably wasn't but about 10 or 15 minutes after he had walked out.
Q Okay. And now when -- when you got out there, what position was Mr. Hogan in?

A Yes, sir.
Q All right. Has anyone suggested to you what you should say here at the trial?
A No, sir.
Q Okay. Have you had any contact with Mr. Corder after this?
A No, sir.
Q All right. Ms. Smith, are you familiar with any other facts that might -- the jury needs to know about here today with regard to the incident there?
A No, sir.
Q Okay. That's all the questions I have for you.
THE COURT: Cross examination, Mr. Hendrix?

CROSS-EXAMINATION

BY MR. HENDRIX:

Q Ms. Smith, my name is John Hendrix and I think we've met before. You'd given a deposition sometime back and so I kind of had some idea of what you would say today. I do have a couple of questions for you.

When -- when you and your mom got there or shortly thereafter, were y'all aware that Mr. Hogan was moving the SUV around or something with the big forklift thing there?
A I knew the forklift had been moved, but I didn't know there was a car on the forklift.
Q You could hear the forklift moving?

A I -- I heard something, I can't say for sure it was the forklift because we were inside the carport of the shop and it's brick walls so you can't see out, but I assumed that was what was running when we went out and seen the car down on him.

Q Because -- well what I'm saying is, before that you heard something moving around out back -- I'm going to call it in the salvage yard area, that you understood to be the forklift contraption, which is actually a front-end loader that was holding the SUV; is that right?

A Yes, sir.

Q Okay. And did you see him moving that; you heard it?

A Yes, sir.

Q And Mr. Corder was inside with you when you heard that machinery running back there; is that correct?

A Yes, sir.

Q So it couldn't have been him that was driving the machinery or operating the machinery; is that right?

A That's correct.

Q And you heard that machinery moving or running out back before you heard Mr. Hogan holler that he needed help; is that right?

A Yes, sir.

Q How much long -- how much before you heard him

hollering was it that you had heard the machinery running back in the back?

A Approximately 20 minutes or so.

Q Okay. So while Mr. Hogan, Mr. Corder was inside talking to you -- you -- and I don't what your mom heard, we haven't talked to her yet, but you heard the machinery moving around in the salvage yard area; is that correct?

A I heard it running.

Q Running. Okay. Did it sound like it was getting closer as best you can remember?

A Not that I can remember.

Q Okay.

MR. HENDRIX: You have the original --

Your Honor, we'd like to open this and make it an exhibit.

THE COURT: Yes, sir.

MR. HENDRIX: And ask the witness a couple of questions from it. Can I go ahead and do that?

THE COURT: Yes, sir, you may.

(Court's Exhibit Number 3 was marked for the record.)

The COURT REPORTER: This is Court's Exhibit 3, Your Honor.

BY MR. HENDRIX:

Q I'm going to give this to you and I'm going to ask

you to turn to some pages and -- and look at some stuff with me, okay?

A Okay.

Q Turn to page 10 if you don't mind. Look at on the left hand side there's some numbers going down the page, those are -- I'm going to call them line numbers.

A Uh-huh (affirmative response).

Q If you go down to 17; this would be your answer to a question.

Let's go back up to 13. You go up to line 13 the question was: All right then. Well the date of the incident with Mr. Hogan, do you recall about what was going on there when you arrived at Mr. Corder's.

And starting on line 17, what was your answer?

A I said when I arrived, Jerry had been pulling a tractor down that had a little forklift on the front of it and he -- he picked up and -- he had a Tahoe up on it and he was under the Tahoe working on it.

Q And go on.

A And I was standing in the shop talking to Mr. Corder waiting on him to take my payment and we heard something sound like something fell and Jerry was hollering help, help, help and we all went running out there and the Tahoe -- the forklift had dropped down and the Tahoe was on him and had him pinned to the ground.

Q Okay. Now when -- when you gave your deposition, you told us that when you got there, Mr. Hogan was the one that had the -- the SUV up on the forklift thing. You called it a forklift, but I mean that's, but that's what you said then; is that right?

A That is correct. I may have. I originally stated at that time that I didn't remember much from the incident.

Q Okay. And when you got there, there were only two people there, Mr. Corder, who was inside with y'all?

A Yes, sir.

Q And Mr. Hogan, who was out doing stuff in the yard and passed through one time maybe 10 minutes before the incident; is that correct?

A That's correct.

Q Now if you'd turn to page 29. Well I tell you what, there was a question on page 28. If you go to page 28, line 23, do you see that?

A Yes, sir.

Q And the question was: Do you know anything about whether he had been on, up on the forklift before you heard him yelling.

And your answer starting on page 29 at the top of the page was what?

A No, you could hear him driving the tractor around and then heard it stop and I do recall one of them saying

that there had been a hydraulic leak on the fork of the tractor and I believe that may have been what caused it to slowly drop down while he was under it.

Q And you were asked who said that?

A I said I don't recall which one said it, but I heard it when I was out there.

Q Now you -- and you said that we asked you if this was before the injury and you said?

A Yes.

Q Okay. Now if you turn to page 30, you were asked another question and look at line -- when you said he was driving, you're talking about Mr. Hogan there, right?

A Yes, sir.

Q Okay. Now on page 30, if you look at line 4, about the middle of that line, it starts with but?

A Uh-huh (affirmative response).

Q What does that say?

A But I know he was out there driving. You could hear the tractor running while we were talking.

Q Okay. And that he was Mr. Hogan because you were in there talking to Mr. Corder?

A Correct.

Q Okay. And if you would also turn to page 38, line 21?

A Okay.

Q You were asked the question -- you on page 38?
A Yes, sir.
Q Line 21 said the question was: All right. Do you recall whether that was in a conversation about the loader or was that your impression or how you are connecting those two.

And your answer was?
A That was my impression because he was asking about a part, about needing a part off.
Q Okay. And you went on to say what else?
A And I'm assuming, I wasn't trying to listen in, me and Mama were talking as well and then I heard something about a hydraulic leak. So I'm assuming they were talking about him picking the truck up with the tractor and the forklift having a leak in it.
Q And you were then asked: Is it possible that the leak had nothing to do with the forklift and your answer was?
A Possibly.
Q Okay. Now having had an opportunity to refresh your memory, is it your recollection today that you did hear Mr. Hogan -- because there was nobody else there to do it -- operating a piece of machinery in the salvage yard?
A Yes, sir, I heard one running.
Q Okay. And all that time when you heard that

running, Mr. Corder was inside talking to you and your mama?

A Correct.

Q So it couldn't have been him that was running it?

A No, sir.

Q Okay. The only other logical conclusion would be that it was Mr. Hogan that was running it?

A Yes, sir.

Q Okay.

MR. HENDRIX: Nothing further, Your Honor.

THE COURT: Redirect?

MR. BUNCE: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. BUNCE:

Q Ms. Smith, now you were asked some questions about your earlier testimony by Mr. Hendrix and I think you brought it, when you started out there, you brought in your testimony about when you arrived that Mr. Hogan was doing certain things and that he was -- that he picked up a Tahoe and he was working under it. Do you recall -- this was the first question that he asked you, or that you were asked about the incident; is that correct?

A Yes, sir.

Q Okay. And when you were testifying about what was -- that he was working under, Mr. Hogan, did you see

Q Did he seem surprised that he was there?
A No, sir.
Q Okay. That's all the questions I have, Your Honor?
THE COURT: Any recross?
MR. HENDRIX: Very briefly.

RECROSS-EXAMINATION

BY MR. HENDRIX:

Q Could it have been around lunch time, somewhere in that area when you and your mom got there?
A I believe it was a little before lunch.
Q Okay.
A I'm assuming it wasn't quite middle of the day; it was pretty early in the day.
Q Okay. So your belief is that it was lunch time or a little before?
A Yes, sir.
Q Okay. Not later?
A No, sir.
Q Thank you.
THE COURT: Thank you, ma'am, you may step down.
All right. Yes, sir.
MR. BUNCE: Plaintiff calls Becky Smith (sic).

BECKY DAVIS,

having been duly sworn, testified as follows:

THE CLERK: Have a seat and state your full name

for the record.

THE WITNESS: Becky Davis.

DIRECT EXAMINATION

BY MR. BUNCE:

Q Ms. Davis, I'm Brad Bunce. I represent Mr. Hogan. Have you and I -- have you and I ever met?

A I don't think so.

Q Okay. We had a phone conversation last week?

A I think so.

Q Okay. Have we talked any other times?

A No.

Q Okay. You know Harold Corder?

A Yes, sir.

Q All right. How do you know Harold Corder?

A My daughter, she went to make payments on a vehicle and stuff.

Q Okay. Do you have any -- any social contact with Mr. Corder outside of that?

A No.

Q All right. Do you know Jerry Hogan?

A Yes, sir.

Q How do you know Jerry Hogan?

A From my daughter.

Q Okay. Have you had any -- do y'all socialize together?

A I mean I talk to his wife on Facebook, but that's about it.

Q Okay. And were -- were you -- were y'all friends before this incident with Mr. Hogan?

A I couldn't hear you.

Q Were you friends with the Hogans before this incident?

A Well, I knew them, but I didn't go around them or anything like that.

Q Okay, ma'am. All right. February 18th, 2011, do you remember that day?

A Yes, when that vehicle fell on Jerry.

Q Okay. And I'm not going to ask you what you had for breakfast that day, but do you remember being at Corder and Sons that day?

A Yes, sir.

Q Okay. What happened when you got there at Corder and Sons?

A Me and my daughter went in there and talked to Harold Corder and we heard, we heard a boom and then heard Jerry holler help, help, so me and my daughter went outside and he was laying up under a vehicle and I went back and told Mr. Corder, I said this man is out here laying under a vehicle. I don't care; he ain't hurt; ain't nothing wrong with him.

Q Okay. So how long were you there before -- before you heard Jerry calling for help?
A I really don't know.
Q Okay. Well was it when you just arrived?
A It was a few minutes afterwards.
Q All right. Had you seen Mr. Hogan there that day before you heard him calling for help?
A I think he came in and spoke and then went on out.
Q Okay. Did you hear any of the conversation?
A No.
Q Okay. You said he came in and spoke; who did he speak to?
A He's a nice person. I guess he was speaking to us.
Q Okay. Did -- was Mr. Corder in the room when he came in and spoke?
A Yes, sir.
Q Okay. Did Mr. Corder find it surprising that -- did he act surprised that Jerry Hogan was there?
A No, sir.
Q Okay. And -- and where did Jerry go after that?
A He went to the side of the building.
Q Okay. Now when he called for help, what did you see when you got out there?
A I seen him up under the vehicle.
Q Okay. Do you remember what his position was?

down that road, so I don't know. You can hear all kind of things.

Q Okay. Do you recall hearing anything out there?

A No.

Q All right. I'm going to show you a couple of pictures here just so we can oriented.

Let me show you what's been marked as Plaintiff's 17. Does that look familiar to you?

A Yeah, that's Harold's shop.

Q Now, that's what we've got up here on the screen; is that the same thing?

A Yeah, it looks --

Q Okay. And -- and so the office is over to the left of the --

A Yeah, where that little window is.

Q Okay. And I'm going to show this next one here that's been marked as Plaintiff's Exhibit 9. All right?

A Uh-huh (affirmative response).

Q Have you ever seen this photograph before?

A I've never seen this one before until just now.

Q Okay. Well, does that look like the machinery you saw out there?

A Uh-huh (affirmative response).

Q Okay. All right. All right. So we're talking about this one here. The -- does that look like the

Q Okay. Okay. Thank you. I don't have anything further.

THE COURT: You can step down. Thank you, ma'am.

MR. BUNCE: Your Honor, may these witnesses be excused?

THE COURT: Any objections?

MR. HENDRIX: No objection.

THE COURT: Okay. They're excused. Thank you.

MR. BUNCE: Your Honor, we call Stephen Fournier.

STEPHEN FOURNIER,

having been duly sworn, testified as follows:

THE CLERK: You may have a seat and state your full name for the record.

THE WITNESS: My name is Stephen Fournier.

DIRECT EXAMINATION

BY MR. BUNCE:

Q Mr. Fournier, what is your occupation, sir?

A I'm a Civil Engineer.

Q Where did you attend university?

A Northeastern University, Boston Massachusetts.

Q All right. You obtained a degree there, sir?

A I did.

Q And which degree?

A Bachelors of Science Civil Engineering.

Q And after you graduated, did you start work?

A I did.
Q All right. What -- where did you work after you graduated?
A The first ten years after graduation, I worked for a series of consulting engineering companies basically doing studies and designs and some construction inspection on jobs in progress.
Q All right. And after that, where did you work?
A I worked for a General Contractor called CT Main Construction.
Q All right. And where was that at?
A Originally the office was out of Waterville, Maine and while -- while we -- while I was there, we got purchased by a company out of Boston, Mass, and I worked basically two jobs. One is a paper company in Jay, Maine and another one was a hydroelectric facility in Pennsylvania on the Susquehanna River.
Q And what sorts of job duties did you have there?
A I worked initially as a division engineer doing design support for field staff. Then I became an area superintendent of the paper mill job. We're doing -- performing working with mill engineers performing maintenance work that the mill didn't want to perform. So we were physically doing a series of smaller jobs. We had a crew of, in the vicinity of about, maybe a 150 to 200

people that we managed on a daily basis, you know, for that work. It was myself and another area superintendent that divided the duties for that.

And then during the long weekends where there would be holiday weekends and so forth, we went through a series of shutdowns and then we'd work around the clock on those shutdowns but basically doing those same kinds of jobs. Only during the shutdown periods, portions of the mill wouldn't be shutdown normally.

Q All right. And you indicated earlier your degree is in Civil Engineering?

A Correct.

Q All right. How is that, what is the field of Civil Engineering cover?

A Basically it's infrastructure in roads, bridges, water treatment plants, waste water treatment plants, pumping stations, anything that you would need basically for, you know function. It doesn't involve necessarily electricity or gas or things of that nature, but involves houses, large buildings, you name it and it typically involves the construction process.

Q All right. And where are you currently employed, sir?

A Actually two companies. The primary employer is a company called Robson Forensic. They're located in -- I'm

located in the Charleston, South Carolina Office.

Q What is, what does Robson Forensic do?

A We provide litigative consulting. That's basically we work for attorneys and others involving litigation, where we utilize our particular disciplines and expertise but -- as assistance in those functions.

Q Okay. And you said you worked primarily for attorneys and parties who are involved in litigation in that job. I guess you can divide the world up in the, in the lawsuit world into the people who are bringing suits and the people who are defending suits; is that fair to say?

A Yes.

Q All right. Have -- do you work one side of the fence?

A No, we work both sides and I think, you know, my current split is probably about 75 plaintiff; 25 defense. In the past it's more even around probably 55 plaintiff; 45 defense.

Q Okay. All right. And you said you had another -- you work with someone else too?

A Another company, a sister company of Robson Forensic is a company called Fournier, Robson, and Associates and that company basically provides non-litigative consulting. You know, typically sometimes

after some of our litigation work has been completed, we still have a client that needs something fixed or something taken care of and that's typically where we would perform that kind of work where we design -- say the house move and now it needs to be fixed; how do we fix it, how do we shore it up, the wall that fell down and those kinds of things.

That's a couple of things that we've done. We've also done construction support for contractors. We've designed building frames, shoring systems, things of that nature.

Q Okay. Do you hold any certifications, sir?

A I am a Licensed Professional Engineer in I think 13 or 14 states.

Q All right. And what -- what's a professional engineer, what does that consist of?

A Well, basically you have to do, you have to pass two eight-hour exams. Typically the first one is typically right after school, they have an examination on engineering fundamentals. Then you have to work, before you can sit for your next exam, you have to work for an engineering company in responsible positions for at least four years. Once you do that, then you make application to a state and then you can sit for the next exam, which is another eight-hour exam in your area of discipline and my first, first license was in the State of Maine where I was working

at the time.

Q Okay. All right. And do you hold, and that designation is P.E.; is that correct?

A Professional Engineer, yes.

Q And are you certified within the State of South Carolina?

A I am.

Q And are you a member of any professional organizations?

A I am, American Society of Civil Engineers and the sister organization underneath that called Construction Institute.

Q Do you have any experience using heavy equipment?

A Yes, typically in the construction process we use all kinds of equipment, cranes, bull dozers, excavators, scissor lifts, aerial lifts, you name it, front-end loaders, a variety of equipment.

Q All right. Have you consulted on cases involving heavy equipment?

A I have.

Q All right. Now you mentioned cranes earlier? What -- what is the field -- what is rigging?

A Rigging is basically, it's the science, if you would, of the process of -- of lifting materials in one way or another. Typically with a crane, you have a hoist line

that you drop down and you attach that to a load and devices around the load in some way, shape, or manner, and then you basically lift it up vertically, swinging into position and then lower it and set it. That's one way of, of -- of -- of rigging.

Another way of rigging is essentially lifting something up from the bottom and that can be done via jacks; that can be done via forklift type equipment, things of that nature.

Q Okay. And so rigging doesn't just involve cranes?

A It doesn't just involve cranes. It involves the process of lifting and lifting safely.

Q Okay. And the study of safe lifting is that a subset of engineering?

A It is.

Q Have you consulted on a case involving rigging?

A I have.

Q Okay. Have you testified in other cases?

A I have.

Q All right. Have you been qualified as an expert in the field of engineering in the courtroom?

A I have.

Q All right. Have you been qualified as an expert in the field of rigging in the courtroom?

A I have.

MR. BUNCE: Your Honor, at this time, I would offer Stephen Fournier as an expert in the field of engineering and rigging?

THE COURT: Any voir dire, Mr. Hendrix?

MR. HENDRIX: Very briefly.

VOIR DIRE EXAMINATION

BY MR. HENDRIX:

Q When you said that you received a P.E., your Professional Engineering License, is that in a particular discipline such as Civil Engineering?

A It is, sir.

Q Okay. So yours is in Civil Engineering?

A Correct.

Q Okay. And you indicated that you had been qualified by some court as an expert in rigging?

A Yes.

Q Where was that?

A I'm not sure of the exact courts. Let's see here. I -- I've done over forty crane and rigging cases. I'm not sure how many times I've been actually qualified in court on those cases, been over a dozen at least and I've -- you know, testified in, in 13 or 14 states now.

Q Have you ever testified as a rigging expert in the State of South Carolina?

A I have not.

MR. HENDRIX: Your Honor, I don't think I have anything further. I'm going to leave it to Your Honor to make a decision.

THE COURT: All right. He's qualified.

Ladies and gentlemen, typically witnesses can only testify about things they've observed through one of their senses. There is an exception under the law for people who have because of the expertise they've achieved in their given field, are deemed experts in their field and if a witness is qualified as an expert, he or she may give an opinion about things that they've observed through their senses. Usually witnesses are not allowed to give opinions about things they've seen or heard or observed, but experts are allowed to give opinions. However, the credibility of all witnesses, including expert witnesses, is entirely up to you.

So yes, sir, you may proceed.

DIRECT EXAMINATION CONTINUED

BY MR. BUNCE:

Q All right. Mr. Fournier, have you examined some materials in this case?

A I have.

Q All right. What source of materials have you examined?

A Deposition testimony, a number of photos, the

complaint, answers in the discovery process, as well as the I guess post-incident investigation performed by the Department of Labor.

Q All right. These are the types of materials you typically rely on?

A Yes.

Q And did you consider any reference materials?

A I did. The number of standards that I referred to in my deposition testimony; and I'm sure I will speak about today.

Q Okay. So have you reached any conclusions regarding the cause of this -- of Mr. Hogan's injuries?

A I have.

Q All right. And what are your conclusions?

A Basically the first and biggest one is essentially a failure to provide proper blocking or cribbing underneath the lifted load. You're not supposed to have personnel working or located underneath any elevated load, whether it's being elevated by crane or it's being elevated by the forks on a forklift or a modified loader configured like a forklift. But you aren't supposed to have people working underneath there unless there's some kind of secondary bracing, cribbing, or blocking that's underneath that vehicle in case something goes wrong because what happens is you've got a very heavy load above somebody and if

something does go wrong, it's going to fall and injure that person and then the potential for a serious injury and death is very great.

So that's one of the reasons that you need to have in all instances some kind of blocking, secondary mechanism if you have people working underneath it.

Now you can have situations where you're lifting and moving things and nobody around, then you don't have to have that blocking in place, but when you have personnel working underneath -- underneath in very close proximities to an elevated load, then you need, needs the support of safety.

Q Okay. All right. With that blocking and cribbing issue there, you said there needed to be a secondary mechanism?

A Correct.

Q All right. Have you considered the axle that was, that was used by Corder and Sons, the secondary mechanism?

A I have except that when you do this blocking and cribbing, you need at least two forms of support because if you have -- if the primary means of lifting fails, forks or load line or something, and you only have one -- one means of support underneath that load, then the only way for that to be effective at that point in time would be -- when you're lifting underneath -- would have to be located so

it's underneath the center of gravity of that load. Otherwise it'll, the load will fall over or topple over.

So you need at least two means of, two means of support underneath a load and in this particular instance, they only had one, one axle that they were using and as far as that was concerned, the position of that axle relative to the load was not really functioning, you know, properly and --

Q Why is that?

A Well, you had a situation where the -- you have the forks that are on the, that are attached to where the loader bucket used to be, but you have forks out there and the -- my understanding from the testimony is that the -- the axle that was used as a secondary support in this instance was located basically at the base of the fork of the -- nearest the -- the loader portion of the -- of the fork instead of at the other end of the fork. So effectively what you have is the forks, the length of the forks themselves supporting the vehicle, the vehicle load and the forks, and, and the secondary support is back on the -- on the machine side of it. So effectively, you've got cantilever action. You've got a kind of like a somewhat of a diving board, if you would, when you have something sticking out like this, you've got the load of the vehicle sitting on it, but there's no means of support

over here; it's over here. So if this thing -- if the -- if the forks can tilt, essentially it's tilting, going to be tilting above the means of support here, but the forks can still tilt because the loads being applied outboard of that means of support.

Q Okay. And the -- the support he was going to use should be at the end of the, at the end of the forks?

A Correct. Ideally both ends, but -- but given two means of support on both sides of the load so you're bracketing the load. But -- but if you, if you're only picking one, in my mind, the way to have it is essentially out at the far end so that you're being supported by the load -- by the loader itself and its hydraulic system and this secondary means of support, which would be out at the end. So it would -- it would -- in that position, that way would not allow a lot of -- not permit the forks to tilt if it was out at the end. Because it was positioned in the manner that it was. The forks tilted and when the forks tilted, essentially that could cause the -- if it tilted enough, could cause the load to shift and slip off the, of the forks.

Q Okay. These conclusions about the blocking and cribbing, where, is this just out of your mind that you're saying that they should have blocking and cribbing?

A No.

Q Where -- where do you get that?

A There's a variety of standards that we talk about and you have to kind of combine them, if you would. The -- there is a standard, it's the MC Standard B56, it's safety standards for rough terrain forklift trucks.

Q Okay. Let's back up a little bit. When you're saying standards, what do you mean?

A Standard is essentially, it's a -- ANSI -- it's a group of people called American National Standards Institute. It's a consensus group that, that encompasses equipment manufacturers, construction personnel, safety personnel, a wide variety of companies, and organizations are involved in -- in these ANSI Organizations and they have all kinds of -- of -- of standards for various things.

This particular one is for a rough terrain forklift truck, which this vehicle was basically functioning as. It was basically a front-end loader that was modified in some fashion by removing the bucket of the front-end loader and attaching a fork mechanism to it.

Q Yes, sir.

A So -- but it was functioning for the most part as a rough terrain forklift truck.

Q Right.

A So I used that standard as --

Q Is ANSI -- these ANSI standards, do you just them

to actually catch people after the fact?

A No, this is -- this is a National Consensus Standard they recognize nationally as -- as either design and/or use standards and performance standards.

Q Okay.

A For a variety of topics and there are a number of organizations that when you get the materials from basically say that this material complies with and one of the things that it said that you may be both familiar with is buy a ladder, a step ladder or extension ladder at a high risk or Lowes or Home Depot, you'll see on one of the ladder labels they have conforms to ANSI A-141234 or 5 and also OSHA and things of this nature.

So it's a standard that a lot of manufacturers try to -- try to meet and -- and -- and tell the using public that -- that the, the products that they manufactured to these standards.

Q Okay. And so this ANSI --

A 56, B-56-6.

Q All right. That's just some arbitrary number?

A Arbitrary number that they've chosen.

Q But it's for rough terrain forklifts?

A Rough terrain forklifts, which in my opinion, most resembles the -- the modified equipment in this case.

Q Okay. How is the loader used here different than a

purpose-built-rough-terrain forklift?

A The primary difference is that, that rough terrain forklift would typically have a telescoping boom on it. It has the capability of lifting as a front-end loader does and in rough terrain basically is an articulated body that allows the boom then to swing or move in one direction or another and then -- then you'd tilt the forks. So you have -- you can go up and down with a boom and it can go, telescope in and out and then you have the forks themselves that lift. So -- but these typically always, all these devices have a load chart on them. So they tell you if you had a particular load that you can only use it in these configurations and if you exceed the loads on this, it's unsafe to use.

Q Okay. At the risk of getting too far afield here, when you say a telescoping boom, you mean that the forks themselves can push out and in?

A Correct. That's not the forks, but the boom that attaches to the forks.

Q All right. Then the difference between this vehicle and a purpose-built-rough-terrain forklift, you see it as coming into play in this case at all?

A Not really, no.

Q Okay. All right. So what did the standards have to say about -- that applied to this?

A The -- there's a couple of standard things that a I'm thinking that are kind of customary and it says the purpose of this standard is to promote safety through the design, the structure, application, operation, and maintenance of rough terrain forklifts. Then it says that the rough terrain forklift trucks can cause injury if improperly used or maintained.

But the key one in this instance is, it's under Section 6, which is operating the safety rules and practices and it's paragraph under Section 6-2, which is general that says paragraph 6.2.7 says do not allow anyone to stand or pass under the elevated portion of any rough-terrain-forklift truck whether empty or loaded.

That's the -- the -- you know, the basic animal here is that we have a rough terrain, a vehicle functioning as a rough-terrain-forklift truck.

Q Is that -- these ANSI standards, are those things that are available to the public?

A The public could take a look at them online, yes, could order them and -- and -- and get them, yes.

Q These aren't secret things that are only available to engineers?

A That's correct.

Q Okay. Is this ANSI standards something that the operators of the vehicles should be familiar with?

A Typically what happens -- a bunch of what's in the ANSI standard or portions of the ANSI standard anyhow, are generally found in an operator's manual, which is typically found in the vehicle itself. So you have operating instructions and things of this nature that should be in the operator's manual, which should be in the vehicle or the piece of machinery. If there's not a typical operator's manual -- owner's manual for this thing, doesn't necessarily have the design standards, if you would, for that ANSI would have in the standard. That would have it there, but the operational safety stuff that's located in ANSI would typically be in the owner's manual or operator's manual.

Q All right. Are there any other standards you believe are relevant to the issues of blocking and cribbing?

A Yes. A companion standard to that is -- is -- is a -- there's another organization called AEM, it's the Association of Equipment Manufacturers. They have produced a -- a whole series of -- of standards for various pieces of equipment typically used in either the construction end or -- or industry and they have one also for a fork -- a rough-terrain forklift.

It has -- it's kind of more general in nature than, than some, as specific as ANSI. On page 24, under -- under

a section called Operate Safely -- it's a section called lifting, lift a load safely and they have a -- a series of bullet points in there that talks about, says never suspend or free rig a load without written instructions and approval from the equipment manufacturer. Suspended loads are very dangerous and then it says adjust the spacing of the forks so they engage the pallet or load at its maximum width. Approach the load slowly and squarely with the forks straight and level. Never attempt to use just one fork to lift a load and then never operate the forklift without a legible load shot. Though you got some information there and -- and that's pretty much it for there, other than talking about transporting loads and in this instance, they're not talking about lifting loads in a manner that we, that was being lifted. In this instance, it talked about not using a tether or a tag-line to restrict load movement and --

Q What would a tag-line be?

A Basically a rope or a strap or, or chain of some kind to prevent a load from swimming and that's typically from a suspended load from like a crane, a wire rope or sling or something of that nature.

Q Would a tag-line or tug-line approach apply to lifting a load?

A No. Another standard is ANSI A-10-42. Another

ANSI organization, they produced a whole series, about two dozen standards, the A-10 series for various procedures and involvements in construction activities. This particular one is safety requirements for rigging qualifications and responsibilities. This is not so much on how to lift like to make sure that -- that people that are performing lifting operations are trained and qualified to perform those operations.

Q All right. And so that sets out who's qualified to design a lifting operation?

A Yes.

Q Okay.

A And it defines competent persons, qualified persons, qualified riggers, training and -- and one of the things that they consider is that -- that an operator -- they have a section in there under the rigging thing called critical operations and then they define a number of operations that you can perform that they -- they consider to be critical.

When they're critical they even have to have more checks and balances and safety aspects involved and one of them is lifting over personnel. You're not supposed to have -- you're not supposed to do that. And then underneath that they also say that -- that you need temporary support for a load to set on or moved across

temporary structures or support or when cranes or hoists set up on or supported by temporary structures. Temporary structures supports during the rigging process. You need basically temporary supports for the rigging process depending upon the situation.

Q And that would apply -- would that apply if you're simply moving vehicles out in the field?

A Yes. And anytime you're using a mechanical, mechanical advantage and that -- that's effectively what we're doing with -- with these, with this structure, modified front-end loader that's modified to be a rough-terrain forklift. They're using mechanical advantage to be able to lift the -- the vehicle and elevate it. So using it with mechanical advantage.

Q And under, when you know you're moving something in a -- in a field from place to place, is that a critical operation or a safety operation?

A It's not a critical operation. The act of lifting itself is not a critical operation, but when you put personnel underneath it in very close proximity to it without temporary supports, it becomes a very critical operation.

Q Okay. All right. So considering what -- what the ANSI standard is and says about different qualifications and who can design these sorts of operations as I

understand it, applying to when there's going to be a load above people working underneath?

A That's correct.

Q All right. Is anyone from Corder and Sons qualified to design that?

MR. HENDRIX: Objection, Your Honor, I don't think he would be able to testify --

THE COURT: Sustained.

MR. BUNCE: All right.

BY MR. BUNCE:

Q Have you examined Mr. Corder's -- are you aware through his deposition and testimony of Mr. Corder's education with regard to salvage operations?

A I am.

Q All right. Are you aware of anything in there that would qualify him to be a rigger?

MR. HENDRIX: Same objection, Your Honor. I think he's trying to get around the same thing. He's asking a limited question and wants to know is that -- based on that is there anything said he's qualified.

THE COURT: Well, I think he's laid an adequate foundation. I'll overrule that objection. Go ahead.

THE WITNESS: I have, but I don't think he is. The standard defines a qualified person as one who possesses a -- by a recognized degree, certificate or professional

standing or who has by extensive knowledge, training and experience, has successfully demonstrated an ability and competence to solve problems related to the subject matter and work and in this mind, in this particular case, it's my opinion that the problems that were encountered weren't successfully solved with the use of a single brace and the type of brace that was used was not in my mind a successful demonstration of -- of solving that -- that lifting problem and they also define competent person in the standard as one who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees and who has the authorization to take prompt corrective measures to eliminate them.

What this is basically saying is that you recognize the danger; you take care of it. But you've also got to recognize a potential danger and in this particular instance, putting people underneath, you know, suspended loads is -- is a danger and you need, you needed to rectify that danger or eliminate that hazard by either not putting people underneath that suspended load or providing necessary temporary supports for that.

BY MR. BUNCE:

Q All right. So getting to the procedure that was Corder and Sons design and utilized out there as you

understand it, was it safe?

A In my opinion, it was not safe.

Q Did the, now this axle was a very substantial piece of metal, correct?

A Correct.

Q All right. Is the compressive strength of it, is that not enough to overcome the issues?

A I don't have a problem with the compressive strength that that -- I have two -- two problems. One is it was single and then again anytime you're using supports, you have to use them in pairs.

Q Okay.

A There have to be at least two. So you need, if you're going to use one, you need two. The other thing you have is -- is essentially where it was, where it was utilized and how it was utilized; did he have the ability if the -- if the axle came up and was supporting the fork, you would have bearing over the -- over the -- over the axle, but if the -- if the fork then tipped, instead of having bearing over -- over the complete axle, you'd end up basically having point bearing or edge bearing and I may, can I use -- use this --

Q I've got a little bit lost here. What do you mean by bearing?

A Bearing is essentially the way that they had

intended to use this -- this thing is -- is this axle went underneath the fork like this to hold it in place, but they only had one of them. Now we've heard that post-accident that, that this thing was, the forks were tilted. So if I take like my fork in this instance like this and I tilt it instead of bearing over the top. The whole thing, I now only have bearing and I'm actually creating a horizontal force on the top of that -- on the top of that stand and you get that horizontal force that I can kick that thing, kick that thing over. And then you have no support at all and then you can have addition tilting action, you know of the fork.

Q Okay. So -- so what you're referring to is that, that the surface area that's making contact is the problem?

A Correct.

Q Okay. Is there any issues with regard to using a smooth fork; is that causing the issues here?

A No, I mean that's, that's, the forks would have to be smooth in order to slide in and slide out and function that the way they were -- they were intended, but you know, that's another reason why you don't want to use essentially smooth metal against smooth metal. You know, that can become a slippery surface and a slippery combination within itself.

Q All right. So what would have been an effective

solution out there?

A Essentially either two sets of cribbing and/or a stand of some kind that, that was stationary, stable and structurally sound.

Q Okay. When you say cribbing, what do you mean by cribbing?

A Essentially, you know, blocking.

Q We're going to --

A Blocking, I'm talking about essentially a series of 4x4's, 6x6's, things of this nature interlaced and back and forth so you end up, you know, stacking them up so if a load falls, it only falls an inch or two down onto the cribbing and beyond that point, you don't even have to have that two extra inches to even put shims underneath there to make up the difference between the end of the blocking and the load itself. So if you have blocking underneath there, that basically is the temporary support. Again, you need two in order for it to -- to be stable.

Q Okay. Would two mobile home axles have been sufficient cribbing?

A In my mind, no. Again, they're talking about, you're talking about two forks and you're talking about bracketing a load. So, you know, typically you have to have something in front across each fork and something on either side of the load.

Q All right. A stand would also work? A stand would also work? A stand would also have worked?

A Yeah, a jack stand or something of that nature, something that's made for that, you know, for that specific purpose, you know, could have been utilized as well. But again you'd need at least two, if not in that instance if you're using individual stands for -- again to, one for each fork and one to bracket, you know, the bracket loads. So this is, you know, a jack stand is essentially a tripod with a threaded -- threaded rod that goes up through and -- with a cradle and -- that holds the load. You know, typically you have seen those in, in some service stations things of that nature. It can be, you can have them sort of telescoping, essentially metal tubing with holes in them so you can pull them, telescope them up to the right height, put a in through there to hold it in place and so it's adjustable and then having a means of support on the, on the top of the stand and enough base support so it's not tippy.

Q And the nature of the work that was going on underneath it and Corder and Sons there, does that have any bearing on it, on the nature of the supports that were needed?

A Well, you need supports that only -- that not only take care of essentially a vertical load if applied, but

also any horizontal movement that may be part of the process of -- in this case of dismantling the -- a portion of the vehicle, parts of the vehicle or even the motor when you're applying torque or pressure to loosen up nuts, bolts, fittings, things of that nature on the car, there's going to be some -- some -- some pushing and pulling, tugging, some horizontal forces applied so whatever system you're utilizing in the lifting end of the temporary supports have to sustain not only vertical load, but the horizontal load as well.

Q Okay. So your testimony here, was Mr. Hogan properly trained in working underneath a load?

A In my opinion, no.

Q There's been some testimony about may or may not have been a hydraulic leak out there. Could the terminal event of the SUV falling there, could that have occurred in the absence of a hydraulic leak?

A Could you rephrase please.

Q Sure. Mr. Hogan's testified that there was some rocking going on just before, before it fell. There -- did this case necessarily, the terminal event of the SUV falling, did that necessarily -- was it necessarily a hydraulic leak that precipitated that?

A No. Again, that -- if we had the proper temporary supports underneath this device, no matter what happened,

that the load would have been safely supported regardless whether there was a hydraulic leak, inadvertent movement of the, you know of the -- of the vehicle that was being worked on or anything of that nature. If we had the proper and safe temporary support underneath that thing, we wouldn't be here today.

Q So in your opinion, when was the critical failure?

A In my mind, the critical failure is the lack of support.

Q All right. So whenever the whole, the process was designed?

A Yes, effectively -- effectively with, you know, by, by putting personnel underneath there without support was, you know, setting in motion a dangerous condition that in this instance came to pass.

Q Okay. Does it matter who put the axle under the, the fork that day?

A No.

Q This -- these standards that you referred to from ANSI and other organizations, were those available in the 1970's?

A Yes.

Q Okay. Would it have been standard in the engineering, rigging field in the 1970's to know not to work under a suspended load?

A Yes.
Q Is working under a suspended load a recognized hazard that could cause serious injury?
A Yes.
Q And you -- you're aware there's some testimony that there was actually a stand built out there at Corder and Sons?
A Yes, a rack.
Q A rack. Have you seen that?
A I've not seen it in person; I've seen photos of it.
Q Okay. And was the one you've seen, does it appear to be adequate?
A It does.
Q Okay. And so if that had been in place before, at the time of Mr. Hogan's injury, would it have prevented this injury?
A Absolutely.
Q All right. Do you have any other opinions to share with the jury here today?
A I don't believe so.
Q All right. The -- the stand that you've seen, the materials in that, how much would that cost?
A It'd be a few hundred dollars, in that neighborhood.
Q Is there anything there that -- that is exotic

materials?

A No, the standard things, the -- they utilized here was essentially a four vertical columns in the, in the corners, I don't know whether those are 8 x 8's or 10 x 10's, but just basically straightforward, you know, lumber. They had some, the balance of the lumber there is essentially 2 by material used as cross-bracing and bracketing from end to end and I think beyond that, the only other non-board member was essentially that they have two racks, if you would, that the vehicle would, would run on that they placed on top of that is essentially is a landing spot. Those are standard, straightforward equipment that they probably had in the shop or around, but stuff that's straightforward in the automotive, automotive world.

Q Okay. And those 8 x 8's, 10 x 10's, are those hard to get a hold of?

A No, not at all. I mean I know at least up to 8 x 8's would be standard you can get at Home Depot or Lowes or anything of that nature. Beyond an 8 x 8, you may have to go to a specialty lumber shop or something like that to get a hold of it, but I think they're readily available.

Q By readily available, would it take months to get a hold of one of those?

A I would think it --

MR. HENDRIX: Objection, Your Honor, I don't believe there's anything in his qualifications that would let him know what's available and whether you have to order and how long it will take.

MR. BUNCE: May I lay a foundation, Your Honor.

THE COURT: Sure you can attempt to do that.

BY MR. BUNCE:

Q In the process of your -- your engineering in the past, have you actually built these sorts of things?

A Not these types of things, but I've had occasion to, you know, order materials and so forth and -- and -- and look around for things that may not be readily available in Lowes and -- and typically you can find something some place that would be either on the shelf or be readily available in a very short period of time.

Q So you -- you've actually built -- built items using non-standard lumbers before?

A Yes.

Q Okay. And based on that experience, how long would it take to get a hold of something like a 10 x 10?

A I would say typically less than a week.

Q Thank you. That's all the questions I have.

THE BAILIFF: The jury needs a restroom break.

THE COURT: All right. We'll take a short --

MR. HENDRIX: Okay.

THE COURT: How, okay. We'll take a short break. Don't talk about the case.

(The jury left the courtroom at 11:29 a.m.)

THE COURT: Okay. How much longer do you think we have with Mr. Fournier?

MR. BUNCE: I'm finished, Your Honor.

MR. HENDRIX: I'm not exactly sure how long it's going to take.

THE COURT: Okay. I'm just trying to plan for break.

MR. HENDRIX: I'm going to guess maybe a half an hour; it may not be that long, it could be a little longer, but I'm just saying roughly there and I'm trying to figure out how long are your, I'm trying to figure out whether to tell my witness, who is, do any of the them need to try to be here, are we just going to shut down when he gets through and come back tomorrow afternoon because I think we're clearly going until tomorrow afternoon.

THE COURT: Right. How many more witnesses do you have Mr. Bunce?

MR. BUNCE: We have one wife witness, Ms. Hogan.

THE COURT: Right.

MR. BUNCE: Which I don't anticipate to be take greater than a half hour. We have the deposition of Dr. Barwick, which we determined yesterday was about 16 or 17

minutes, Dr. Lozanne, I was looking for, I'm sorry, Your Honor, both of the copies are -- I'm looking to see how long that one took.

MR. HENDRIX: I was thinking, Your Honor, roughly about 2 hours for all of them; does that sound about right.

MR. BUNCE: About right. Dr. Brabham is less than an hour.

MR. HENDRIX: And so we've got two hours for the doctors you say and plus Dr. Brabham's or does that include Dr. Brabham?

MR. BUNCE: Dr. Brabham is an hour.

MR. HENDRIX: Dr. Brabham is not a medical doctor; he's a PhD doctor and I'm talking about the medical doctors.

MR. BUNCE: Dr. Lozanne's is 40 minutes. So--

MR. HENDRIX: And that's about an hour for that one and the short one.

MR. BUNCE: About 2 hours total. So I anticipate we'll be about 2 and a half hours or so left in our case.

THE COURT: So let's say we break at 12:30; we'll come back at 1:30 and we'll get, you say 2 and a half hours?

MR. BUNCE: Yes, Your Honor.

THE COURT: And you've got how many witnesses in your case?

MR. HENDRIX: I'm planning on calling three live witnesses, Your Honor, and one of them hasn't even arrived from Simpsonville and I was trying to see if we could figure out to just let him come tomorrow and whenever you say we're going to start in the afternoon. If you needed me to try to get some witnesses, I can notify them now and see if the other two or more local; one is in the Batesburg/Leesville area and one should be down around Cayce, South Carolina, which is 15 miles or something like that.

THE COURT: How long will their testimony be?

MR. HENDRIX: I don't think it would be that long. I don't think either one of them would be that long.

THE COURT: And that means 30 minutes or what; I know it's hard to say.

MR. HENDRIX: 30 minutes give or take each.

THE COURT: I'm not going to hold you to it --

MR. HENDRIX: I understand. I don't think if we did them tomorrow, I don't think that any of mine are going take that long. I think that we should clearly be able to -- depending on what time we get started tomorrow afternoon, I think we should be able to finish my witnesses tomorrow afternoon and I don't know what time it would be. I know they've made some suggestions to judges about don't give a case to the jury after X, but --

THE COURT: So if we started at 1:00 tomorrow, you, you would be through by when, Mr. Hendrix?

MR. HENDRIX: I believe by, if we started at 1:00, it depends on how many breaks we may take in the meantime, I would believe we ought to be through by 3:00.

THE COURT: Okay. So we could do the arguing and charging.

Well why -- could you ask just one of your witnesses to come this afternoon or --

MR. HENDRIX: Okay. I --

THE COURT: -- if we get, maybe we ought to just check around 2:30 or 3:00 and see where we are. But maybe if you got one that's nearby, we could squeeze one in. That might be enough to give us some breathing room tomorrow.

MR. HENDRIX: Okay. Well let -- all right. Let me see if I can --

THE COURT: All right. Well, okay. Everybody we'll just take about a five minute break and we'll come back and have the cross examination.

(A brief recess was observed.)

(The jury entered the courtroom at 12:04 p.m.)

THE COURT: All right. Cross examination, Mr. Hendrix?

MR. HENDRIX: If it please, Your Honor.

CROSS-EXAMINATION

BY MR. HENDRIX:

Q I guess it's good afternoon, Mr. Fournier, how you doing?

A Good afternoon, sir.

Q It's my understanding that you don't actually know what caused the machine, the -- the front-end loader that was being used as you described it as a rough terrain forklift, you don't know what caused that to have the -- all the pressure taken off the forks or partially taken off the forks of the lifting device, do you?

A I do not, no.

Q And you don't really know what kind of training Mr. Hogan received while working at Corder and Sons, do you?

A I think I know that -- basically my understanding from -- from -- from the testimony that I reviewed is that -- that he was basically told to use that jack stand or that -- that axle as a means of support and that's the basically the level of training that he was given regarding that particular operation.

Q But you don't -- the person that actually trained him, you've never seen a deposition and I think he said that was initially Robert Corder, or Bubba and you've never seen a deposition of his, have you?

A I have not, no.

Q Okay. So you don't actually know the level of training that he would have gotten?
A I do not other than the fact that I do know is the procedure that -- that was utilized in my opinion was unsafe. So --
Q I understand. I understand. Let me go ahead and deal with this. You get paid to testify in cases like this, do you not?
A We're paid by the time that we spend on the case, yes.
Q How much, how do; is that by the hour?
A Yes.
Q What is your hourly rate?
A My company charges $375 an hour.
Q Okay. And I guess that means that Mr. Fournier doesn't get all the $375, that he gets some portion of it hopefully; is that correct?
A I get my normal salary.
Q Okay. Let me ask you this. There was a some discussion with a prior witness -- and I believe you were probably in the courtroom -- about there was something like grease seen maybe dribbling out or something along this area where the -- the yellow thing is -- with the black and there's a silver thing that goes forward; do you see that? What I'm talking about? The yellow thing that comes

forward and the silver thing that attaches to the yellow lifting arm, I've been calling it?

A Yes.

Q That silver thing would be lubricated with something, wouldn't it?

A Typically yes, there would -- in -- in -- in my experiences there is essentially some grease fittings in here that, that would basically provide some machine of -- of grease on that --

Q And I want to be sure, along this right in here?

A That's correct.

Q Okay.

MR. HENDRIX: With Your Honor's permission.

(Mr. Hendrix was showing the jury a picture.)

BY MR. HENDRIX:

Q That would be common to have grease seen in that area, wouldn't it?

A It would be common to see grease in the area, but it would not be common to see anything dripping necessarily, but it would be common to see grease.

Q But at what level would you determine dripping if it was described as grease that would be expected?

A That would be expected on -- on equipment in that location, yes.

Q Okay. You don't claim to be an expert about these

Caterpillar front-end loaders, do you; you're not saying that you're an expert on those?

A No, I mean we've used construction equipment. We've used, you know, front-end loaders like that on -- on construction sites and I know how to use them safely.

Q Okay. Now, you weren't here yesterday, but Mr. Hogan testified that he's worked construction and he's operated heavy equipment and was -- was capable or had the know-how to operate this piece of equipment. So you don't have any reason to doubt that, do you?

A I do not.

Q And would you expect that somewhere along the line, he would have had some training in how to safely operate these; he should have, shouldn't he?

A Yes.

Q Whether it was from Mr. Corder or some of his prior jobs, he should have gotten it?

A From one of his employers, yes.

Q Okay. And as you sit here today, you don't know that he did not receive such training, do you?

A That's correct.

Q All right. Now with that -- having said that, would that mean that Mr. Hogan would probably know just as you described, that, you know, working under a suspended load can be dangerous; you'd expect him to know that,

wouldn't you?

A Don't know if that material was included in the operations manual and that was part of his training. I wouldn't expect him to know it if it wasn't part of his training, may not.

Q Well, let me ask you this. You -- if -- if you assume for the sake of this question that the front-end loader was in good working order, you don't have any criticism of using it with the forks for the purpose of lifting an automobile in and of itself, do you?

A Lifting in and of itself, no.

Q And it should be capable of lifting and holding that load, should it not?

A Yes.

Q So that's one system right there of making sure that it doesn't fall is the equipment itself should be able to hold it up and I understand what you mean about having a secondary system; I understand that, but that's one system of keeping it off any worker that gets part of his body underneath there is the machine itself is capable of holding that kind of load off of the ground suspended?

A It's supposed to.

Q Yes. And you don't have any idea what would have caused the machine to have the forks tilted and the lifting arms -- tell me what they're called; I've been calling them

that and I know that's not right; that's these yellow things --

MR. HENDRIX: This is Plaintiff's Exhibit 9, Your Honor, that we're referring to.

BY MR. HENDRIX:

Q These things that go like that and out then the forks are attached on the end of them, what are they called?

A The lifting arms or booms.

Q Lifting arms are good with me if it's good with you. That if the lifting arms are up and stay up, then you don't know what would have caused the forks to tilt down, do you?

A I believe there's another, there's another set of hydraulics for the forks themselves.

Q Okay. But you're not an expert and you're not that sure about all that, are you?

A Well when I look at that picture, I think there's something on there that -- that has a hydraulic cylinder that -- that -- that operates the tilting angle of the forks.

Q Okay. Do you know if they're completely separate hydraulic systems or they just happened to be just enough pumps and things there to operate both things?

A Different controls and a different control would

operate the -- the tilt of the fork as opposed to --

Q The different controls mean that you could have the load suspended and somebody could use the other lever and it was Mr. Hogan who set it up, it would be him, to cause the tilt on the tilt of the forks that's holding the load; is that correct?

A That's correct.

Q And when you gave your example using the cup and I'll tell you what, I'll use one of mine for the second load. When you gave the example of the forks tilting, that would be more likely to happen if something was applying the force from the forks to tilt it than just the dead weight sitting on it; is that correct?

A It would depend, I mean you basically, in -- in the -- in the application that we're talking about, you've got the weight of the entire vehicle outboard of the -- the -- the axle stand. So you've got that force applied and then -- then the only resisting force you would have would effectively be the hydraulics.

Q All right. Now I think you had some, you talked about the fact of some criticism if the -- and again referring to Plaintiff's Exhibit 9, if the mobile home axle, which was used as the secondary safety device to help hold this up in case there was a problem, you had some criticism if it was placed up under the fork on the end

closest to the machine; is that correct?

A I did, yes.

Q And I think you would say that it would be better if it was put out towards the end of the fork; is that correct?

A That's correct.

Q And would putting it out maybe about a foot or so give or take from the end of the fork, does that sound reasonable?

A It -- it would depend upon where the vehicle is and so forth. More than likely at the end of the fork -- and in that application you may need some kind of device to tether it out or hold it in place to make sure that it doesn't slip or move.

Q But that would be the better place to put it?

A From a -- from a -- from a support standpoint, load location support standpoint, yes.

Q Okay.

A For a single support, which I would not recommend.

Q I understand you wouldn't recommend it.

Now you -- you don't know what the industry standards for salvage yards back in the 70's when Mr. Corder got in business -- you don't what those standards are, do you?

A I do not.

Q I believe you already answered this, but you have not actually participated in the design or -- or construction of a stabilization system or blocking or rigging I think you referred to, cribbing maybe, system for something used in this industry, have you?

A In this industry, no.

Q Okay. And as you sit here today, you don't, you can't say -- Well, let me ask you this, based on the evidence that you know, isn't it more likely or most likely that Mr. Hogan was the operator who set the machine up based on the information you have?

A Yes.

Q Okay.

MR. HENDRIX: I beg the Court's indulgence one moment.

THE COURT: Yes, sir.

(There was a pause in the proceedings.)

BY MR. HENDRIX:

Q Since you're not exactly sure what sort of training Mr. Hogan would have and has, if you have any criticism of his training, you're having to assume that he didn't get adequate training; is that correct?

A That would be correct and -- and -- and then -- and part of that understanding is the fact that -- that the -- that the training included the setup that was being used at

the time which is unsafe and that -- and that in order to be trained properly, you need to be trained by a qualified, competent person who would not set up something unsafe.

Q All right. And before this rigging or the use of the -- of the axle, whatever system you would use as a secondary system come into affect, there would have first have to be something or someone who caused the weight of the SUV or perhaps even the force of the forks to be applied to the axle; is that correct, to the bracing device, something would have to cause that to happen; is that correct?

A Something, yes.

Q And you don't know what that was?

A I don't.

Q Okay. But the secondary device or the secondary safety device would never come into play until the first thing happened, that is the weight or the force of the fork and by force I'm talking about the hydraulics being used to of course push down on it; that would have to happen first?

A That's correct, but that's the reason you have the secondary support is because something can happen and, and before you put a person underneath a suspended load, that support system, secondary support system, needs to be in place in order for it to be safe and compliant.

Q I understand, but if a machine -- the loader was,

was operating properly, then even though you would want the secondary system to be doubly safe, this accident should never have happened?

A With the secondary system in place, the accident would not have happened.

Q Okay. And even if you didn't have the secondary system in place, if the front-end loader was operating properly and had the capacity to hold the load, then still this accident would not have happened?

A It would because you would have had the person underneath a suspended load without the secondary support.

Q If you had that, while it may be dangerous, this accident would not have happened?

A But --

Q If the machine had held?

A If the machine had held, I guess it would not have happened, but again, you don't put, that's the reason we have all these standards and the reason we do things the way we do them.

Q I see. Thank you.

MR. HENDRIX: Nothing further, Your Honor.

REDIRECT EXAMINATION

BY MR. BUNCE:

Q All right. So going over some of the things that Mr. Hendrix brought up here, based on your understanding of

what the procedure that -- that they had in place at Corder and Son, did it appear that Mr. Hogan was following the procedures he was taught?

A Yes.

Q The industry that you're applying these rigging principals to, does it make a difference which industry you're in?

A No, it -- you know -- the -- it -- the rigging is rigging regardless of whether it's in the construction industry, mobile home, you name it -- it's, you know, rigging is rigging.

Q Okay. So if I wanted to hang up an airplane in a restaurant, would rigging principals apply there?

A They would.

Q If I wanted to hang up something in a bowling alley, would rigging principals apply there?

A They would.

Q Would they be the same principal?

A Yes.

Q Okay. The principals that you've looked at here, the -- the standards apply also to how folks are trained; is that correct?

A Yes.

Q All right. Does it speak at all to who is supposed to train an employee? In other words, can you -- is there

a card that people carry around that would be sufficient to say I was trained enough at the last one -- the last job?

A Yeah, under ideal circumstances, there should be documentation of training.

Q Okay.

A And you know cards, certification, things of that nature. I'm a trained rigger -- I'm, you know -- I've received OSHA 10 training, things of that nature. Typically those kinds of, you know, cards are -- are given to, to people who receive training by competent personnel providing the training.

Q Okay. If you get an employee that says I've run construction equipment before, is it reasonable to depend on the former employer to have properly trained them?

A You can have a reasonableness, but typically what would you then need is, is essentially enough observation that you'd be satisfied that they demonstrated a level of competency --

Q Okay.

A -- you know, with the machine.

Q In other words, test him out?

A Yeah.

Q Okay. Would you have to know what they were trained in to be able to evaluate what -- whether they were properly trained before?

A One more time please?
Q Would you, as an employer, as a new employer, would you need to know what they had been trained before to be able to properly determine if they had been properly trained?
A Ideally, yes.
Q Okay. The question about this Exhibit 9 here where the witness, Ms. Smith, testified she saw fluid coming from. All right. And so she --

MR. HENDRIX: Objection, Your Honor, I believe his characterization, I think she said she saw something dripping.

THE COURT: All right. Well --

BY MR. BUNCE:

Q Something dripping. All right. And she indicated here.
A This is the hydraulic cylinder that lifts up the lift down and -- and this is in the extended position when this lift down is lowered, this silver inside, the piston, is pulled back in and there is a grease fitting in here, but -- to slide, so there's grease here. I would not -- and based on my experience, I wouldn't see anything dripping. There would basically be a sheen and you know, and kind of a glaze, if you would on the, on the -- on the steel cylinder, but I wouldn't expect to see anything

dripping.

You also have hydraulic hoses in the area and you know, if you're getting dripping, that's where I expect the possible dripping to occur.

Q Okay. Mr. Hendrix asked you or I concede that you don't know what caused the machine to take the pressure off; is that correct?

A That's correct.

Q All right. Does it matter whether you know -- ultimately as far as the cause of Mr. Hogans injuries, does it matter what caused the pressure to be taken off?

A No, that's the reason you have secondary support is because things happen. Things can happen. Unforeseen things can happen and that's the reason you have the secondary support is in case something like that does happen that we don't have a catastrophic event that causes serious injury or death.

Q Okay. So after Mr. Hendrix's questions, what is your opinion about the cause of Mr. Hogan's injury?

A The failure to provide secondary support underneath that system was the cause of the incident.

Q And you do not consider a mobile home axle a secondary, an adequate secondary support?

A That's correct.

Q All right.

MR. BUNCE: That's all the questions I have, Your Honor.

MR. HENDRIX: Very briefly.

RECROSS-EXAMINATION

BY MR. HENDRIX:

Q As an engineer, you're saying you don't take into account the fact that it's possible certainly that Mr. Hogan, who set this up most probably, brought this on himself? You're not considering that, are you? You're focusing on the secondary system, whether it worked and whether something might be better?

A I'm focusing on the process that was -- was being utilized here was essentially working on an elevated load -- an elevated load with a piece of equipment and in order to do that safely, there has to be a secondary support system in place. So I'm looking at the overall process. If that process was performed in a safe and compliant manner, that secondary support system would be in place and regardless of what happened or what caused something to move, that secondary support system would have kept the load suspended and we wouldn't be here today.

Q And your criticism is that because the secondary load -- load bearing system -- the axle, perhaps didn't save Mr. Hogan from himself, that's what you're saying is why we're here today?

A I'm saying that -- that -- that -- and I think we've talked about it earlier, is that single axle was not, in my mind, safe or appropriate either.

Q I understand. But if Mr. Hogan didn't set it up correctly, that's not safe either, is it?

A That's correct.

Q Okay. And that would be a part of this whole thing, wouldn't it?

A It could be a part of this whole thing, but again, the, a proper secondary support was not implemented or provided.

Q I understand. I understand. Thank you.

THE COURT: All right, sir, you may step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: Thank you, Mr. Fournier.

All right. We'll go ahead and take a lunch break. Just be back at 1:45 and we'll continue with the presentation of evidence. Don't talk about the case and continue to keep an open mind and just be back at 1:45. Thank you.

(The jury left the courtroom at 12:28 p.m.)

THE COURT: Yes, sir?

MR. HENDRIX: For planning purposes and I hope this is okay and I can adjust this if you need for me to. I've asked Mr. Robert Corder if he can be here at three. If

take a five minute break. Don't talk about the case and continue to keep an open mind. Thank you.

(The jury left the courtroom at 2:28 p.m.)

(There was a brief recess.)

(The jury entered the courtroom at 2:38 p.m.)

THE COURT: All right. Yes, sir, Mr. Bunce.

MR. BUNCE: Your Honor, we're going to publish the -- the other deposition of Dr. Karl Lozanne.

THE COURT: Okay.

(The deposition was started with the DVD playing.)

MR. BUNCE: Rather than push through the technological issues. We'll read it in again from the transcript.

We have the original?

THE COURT REPORTER: I don't have that one yet.

MR. BUNCE: You don't have it?

THE COURT REPORTER: I can mark it after you're done.

(The deposition of Dr. Karl Lozanne Direct Examination by Mr. Bunce read into the record by Mr. Bunce and Mr. Marrin.

The deposition of Dr. Karl Lozanne Cross-Examination by Mr. Hendrix read into the record by Mr. Hendrix and Mr. Marrin.

The deposition of Dr. Karl Lozanne Redirect

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF LEXINGTON

JERRY HOGAN,

Plaintiff,

vs. CASE NO. 13-CP-32-03076

CORDER & SONS, INC.,

Defendant.

COPY

VIDEO

DEPOSITION OF: KARL LOZANNE, MD

DATE: July 20, 2015

TIME: 3:55 P.M.

LOCATION: Offices of
Columbia Neurosurgical Associates
720 Rabon Road
Columbia, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: Leslie T. Stanley,
Certified Shorthand Reporter

VIDEOTAPE

A. WILLIAM ROBERTS,JR., & ASSOCIATES

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MR. HENDRIX: My name is Jon Hendrix, and I represent Corder & Sons, Inc.

THE VIDEOGRAPHER: Would the court reporter please swear in the witness, and we may begin.

KARL LOZANNE, MD,

being first duly sworn, testified as follows:

EXAMINATION

BY MR. BUNCE:

Q. Sir, my name is Bradd Bunce, and I represent Jerry Hogan in this case. Can you give -- please give your full name for the record.

A. Karl Angelo Lozanne.

Q. Dr. Lozanne, you are a physician?

A. That's correct.

Q. What is your educational background, sir?

A. Well, I've got an undergraduate degree from Brown University, and I matriculated at Yale School of Medicine, and after I graduated from there, I matched a neurosurgery -- did my neurosurgery residency seven years at the University of Pittsburgh Medical Center; since that time, I've become a board-certified neurosurgeon, practicing in Columbia, South Carolina, and the

your opinions has not reached that level, could you let me know, sir?

A. I will.

Q. Okay, thank you. When did you first see Mr. Hogan?

A. All right, Mr. Hogan first presented to our -- to a hospital that I service in February of 2011.

Q. And which hospital was that?

A. That's Lexington Medical Center.

Q. Okay. And so how did you come to be involved in his care?

A. I was the neurosurgeon on call when he presented to the emergency room, following an injury.

Q. Okay. Do you recall what date you saw him?

A. Let's take a look. He was evaluated on February 18th, 2011.

Q. And so -- I wasn't sure if I caught this, but did you see him in the emergency department?

A. I cannot tell you directly whether it was in the emergency department that I saw him or if I saw him on the floor upstairs in the hospital.

I saw him in the hospital.

Q. Certainly. What were you informed about his history?

A. Um, so apparently, he was a 46-year-old who was working on a car, and the car ended up falling on him, and he ended up presenting to the hospital with a significant amount of discomfort in his back, inability to void, and a CT scan of the abdomen and pelvis were consistent with a burst fracture, broken bones in his low back.

Q. For the jury's benefit, what is a burst bone? What do you mean by that?

A. So a burst fracture, we categorized it from fractures in the spine. A burst fracture is a fracture in which -- if you can imagine the spine being made up of bricks that sit one on top of each other, that's each of your vertebrae.

A burst fracture is one in which the break itself kind of collapses and bulges out, so something hit it from the top, and it just broke, and it kind of fell, broke, out.

Q. Okay. All right. And is -- is that particular to a -- to a kind of force loading?

A. Yes, so this is -- yes, this is a type of fracture that is associated with a force that

A. He was admitted on February 18th, that's correct.

Q. Okay, and -- and you, in fact, did the surgery, correct?

A. That is correct.

Q. And you did that on the 25th of February?

A. Let me look at the exact date. Yes, the surgery date was 2/25/2011.

Q. Okay. And so he -- what I'm getting at here is, did he know that he -- for a couple of days ahead of surgery, that he was going to be facing the surgery?

A. Yes, most definitely. Nobody gets taken to the operating room unless they know they are going to have an operation.

Q. Okay. All right, then. And so you mentioned that the surgery was going to require a general surgeon. Was that Dr. Barwick?

A. That's correct.

Q. All right, so -- so he actually -- as I understand it, he actually opened up Mr. Hogan; is that correct?

A. That's correct.

Q. And opened the field for you to work

through?

A. Exactly.

Q. Okay. And when you -- when you took over the surgery, what did you observe?

A. So we observed the fracture at the L1 vertebral body, and you know, the approach was appropriate, one in which we actually moved the lung forward.

He had the signs of trauma in that area, meaning that there was blood around the areas that -- that's around the spine, and he had a compression fracture with a portion of his fracture -- bone, because of the burst, cutting anteriorly, and some posteriorly as well.

Q. So what did you have to do to repair that?

A. So the biggest thing is to stabilize the spine. In other words, he was having a lot of discomfort, because it hurts, because that bone was no longer able to carry on its function of, you know, holding the rest of the spine up, so we actually resect as much bone as we can actually resect through that incision, and in its place, we put in what's called an intervertebral device, and then we -- we add an anterior -- it's called a

Q. And how did that turn out?

A. Let's see. It showed some subsidence of the cage into the L2 vertebral body, and what that means is that the device that we put in between the other two bones, the device itself ended up kind of sinking down into the bone below it, so the bone below just simply didn't hold it, and that was concerning, and there was -- because of the subsidence and some of the bone that had retro pulse, it was some degree of compression or stenosis in his lumbar spine.

Q. Compression of what?

A. The nerves.

Q. And did that cause you concern?

A. Yes, it became -- it's a concern, especially because of the symptoms that he developed. He started -- during his visit, he complained now of some discomfort going towards his legs, so discomfort towards the legs is always evaluated to determine whether it's any pressure on the nerves itself.

The CT myelogram showed some subsidence of the cage, and now he's having symptoms, and there's some stenosis on the nerves, so yes, that is a concern.

Q. Okay. So -- so the CT myelogram, it showed the reason for the -- for the problems he was having in his legs?

A. That's correct.

Q. Okay, so what was the -- what was your recommendation, as far as what he could do about that?

A. So I recommended to him that now we needed to relieve the pressure on the nerves and supplement his thoracoabdominal procedure with a posterior procedure. What I mean by that is, his bone was not able to sustain the cage that was put into the side.

In that situation, we do what's called a pedicle screw fusion from the back. All right, so two things; one is to relieve the pressure on the nerves, the compression, and the second is to supplement or stabilize or add additional structure to his spine, so it doesn't continue to collapse, and that's the pedicle screw instrumentation.

Q. And so -- so when you say posterior, you mean in the -- the back back?

A. The incision in the back back, exactly.

Q. And -- all right. And so did you actually do that surgery?

A. Yes.

Q. Okay.

A. We did, and he was taken back for that surgery on May 16th, 2011.

Q. Okay, now, again, before the surgery, did you have to discuss the potential benefits and risks of this with him?

A. Every time, that's correct.

Q. All right, were there any different risks for this surgery versus the first time you discussed it with him?

A. Very similar risks, except that, you know, we don't have to bring down the lung; in particular, this one is a procedure that's done through the back, so we don't actually expose the chest cavity.

The risks of this procedure, still the general risks of any surgery, infection, blood loss, potential injury to any structures in the vicinity, which includes the nerves and the spinal cord itself. There's also a risk of what's called a cerebrospinal fluid leak.

The additional risk is that now I need to put screws and rods in the back, so this is instrumentation like we had instrumentation in the

about it. Doctor, Mr. Hogan claims that a vehicle fell from what was essentially a forklift onto him, and the Defendant acknowledges that Mr. Hogan was at his workplace, but he seems to indicate that Mr. Hogan faked the injury or somehow was injured somewhere else or not injured that day or was already injured when he came to work that day.

A. Uh-huh.

Q. Considering all the known facts, could Mr. Hogan reasonably have been working for an entire morning with the injuries that you saw?

A. I think it would be highly unlikely, with the kind of fracture that he had that -- that he sustained it in -- that it wouldn't have been noticed.

Q. Is there any way for Mr. Hogan to somehow fake the injuries that you saw?

A. No, his bones -- his bones were broken.

Q. These -- the injuries that you saw, are they consistent with an item striking -- a heavy object striking Mr. Hogan?

A. It's consistent with a trauma, most definitely.

Q. All right. And from what you know of it, would -- do you have an opinion as to what

caused his injuries?

A. According to the record, in terms of when he came in, he had a car land on him, okay? And it's -- his injury was consistent with a car landing on him.

Q. All right. Is there anything about his injuries that wasn't consistent with that?

A. No.

Q. And is it more likely than not the injuries he suffered on February the 18th required him to have surgery?

A. Yes, his whole clinical course is directly related to the injury with which he presented on February 18th of 2011.

Q. All right, then, Dr. Lozanne, have all the opinions that you have given today, have they been to a reasonable degree of medical certainty?

A. Yes.

Q. Is there anything about your opinions or anything you'd like to change today?

A. Nothing.

Q. All right.

MR. BUNCE: Thank you, that's all the questions I have.

EXAMINATION

keep an open mind. All right. Thank you. Have a good night.

(The jury left the courtroom at 4:26 p.m.)

THE COURT: Do y'all want to go ahead and do the -- was that your last witness or do you --

MR. BUNCE: Yes, Your Honor, I just want to make sure everything is in evidence that needed to be.

THE COURT: Okay. You want to go ahead and do your motions while we're here so we want have to do that tomorrow?

MR. HENDRIX: Sure. I assume you don't have any.

MR. BUNCE: I do not.

MID-TRIAL MOTIONS

MR. HENDRIX: Your Honor, we would move at this time for a directed verdict of nonsuit against the plaintiff on the grounds that the evidence taken as a whole, even in the light most favorable to the plaintiff, is capable of only one reasonable conclusion and that is that the plaintiff is more than 50 percent at fault in causing this accident. And that -- factored into this -- and I don't know if this should be separate or kind of all argued together, is that basically part -- we believe that part of their theory is that essentially res ipsa loquitur should be involved and since this happened, therefore, something must be wrong and we think when you look at all

that combined, the fact that such res ips loquitur has never been recognized by this State and that there is evidence that -- from Mr. Corder, who was called as their witness, from Natasha Smith and even from Mr. Fournier, the expert, that most likely, Mr. Hogan set this machine up and that there is no other evidence other than speculation of a machine failure that the setup is probably what caused the machine to fail and that, therefore, we don't see -- we don't believe that there can be any reasonable conclusion other than that Mr. Hogan and no one else by more than 50 percent caused this accident.

If -- and as a part of that -- excuse me, I'm sorry. Unless you want to stand? I don't think the Judge will mind if your legs are giving you trouble.

(Mr. Corder, the defendant stood up due to health issues.)

THE COURT: No, that's okay.

MR. HENDRIX: Is it okay if he stands?

THE COURT: Yes, sir.

MR. HENDRIX: Okay. As a part of all that, we just think that taking all that evidence into account, that even if there was some negligence on the part of Corder and Sons in not having a better or different system, that that would not equal 50 or 51 percent and that, therefore, we should be entitled to a directed verdict of nonsuit against the

plaintiff's case at this time and should not have to present any evidence.

THE COURT: Okay. Thank you, Mr. Hendrix.

Yes, sir.

MR. BUNCE: Well certainly, Your Honor, while there is some evidence that the plaintiff took certain actions out there. There's also been testimony which should be given the light most favorable to him that he was simply following the instructions provided by the defendant and using the tools provided by the defendant and there's also Mr. Fournier's testimony that essentially the cause of this is not -- is not the terminal event. The cause of this is the failure to provide an adequate system and adequate -- and adequate and safe equipment to work with. And looking ahead towards what the statute requires, Your Honor, that which would be the negligence per se here that the employer's required to provide a work place that's reasonably free of recognized hazards, which would cause injury and that's the cause and issue here. And so, Your Honor, we believe we've certainly met the standard and defeat that motion, Your Honor.

MR. HENDRIX: Your Honor, if I could give one thing in reply to that.

THE COURT: Yes, sir, certainly.

MR. HENDRIX: Is that, you know, Mr. Hogan denied

whatsoever that he had anything to do with operating the machine even though there's some pretty substantial other evidence that, in fact, he did. And we just submit that they shouldn't be allowed to have it both ways. I'm going kinda borrow from the federal system that there's -- there's a theory in the federal system that if a -- if a witness testifies and there's ample opportunity to cross-examine, do all that and straighten out any issues, then they shouldn't be allowed to come in later with something else to try to defeat summary judgment. Well kind of the same thing here. I don't think he ought to be allowed to have it both ways. If he operated the machine and caused this to come down, I think he's got to face the music to that and that -- that the expert's opinion, Mr. Fournier's opinion is just that, an opinion, but that shouldn't -- that's not the legal cause. That's his opinion as to a cause or contributing cause of the accident and we can say a lot of things.

If Mr. -- if Mr. Hogan hadn't come into work that day, we wouldn't be here. That may well be true, but that -- does that, you know, that's the thing; what's the cause of the accident and we think that the cause of the accident in the improper setup, that the evidence is really almost, I think in a criminal case, they'd call it overwhelming, that he's the one that set it up, that it

failed not because there's any evidence of a -- really any evidence of a machine failure; it's a failure because of a setup failure and there is testimony that this machine had never failed like that before.

And when I say machine, I'm including the post, despite what the expert said. We just think under the circumstances we should be inclined to a directed verdict and nonsuit.

THE COURT: Thank you, sir.

MR. BUNCE: And to the extent, I did address it earlier, that the plaintiff is not trying to have it two different ways in this regard; with regard to whether or not he was the person who set up the machinery there. Certainly he was the person holding the axle when it was set there; he admits that much and -- but again, it's -- it's -- it's -- he's following the employer's plan. And so it's that he's -- an issue of him defeating a safety plan, a different safety plan they set up where it would be contributory, but here he's doing exactly what he was told to do.

And then as far as res ipsa, certainly there's no res ipsa in South Carolina, but we -- we recognize that essentially circumstantial evidence gets us to the same point. And so circumstantial evidence is such that there's been testimony about a potential hydraulic leak. There's

been testimony that -- that this could have happened in other ways do to the loading, the way it was set up even following the instructions that he was given. So there's a number of different ways that this can provide and certainly he was not in a position outside of there to look out and see what exactly happened.

He's never going to be able to provide that testimony and that's not the burden on him, Your Honor, it's simply to provide testimony for which the jury can infer it.

MR. HENDRIX: They can't from speculation, Your Honor, and that's what we think that. All this stuff about a hydraulic blah, blah, blah. If you consider the testimony and what was actually said, including Natasha Smith that she did -- any -- if there was any discussion of a hydraulic leak, it could have been about something other than the -- the loader and the mom saw something dripping that she described as grease from exactly where the grease, not hydraulic fluid, would be expected to come from.

We just think there's no evidence there whatsoever to base it on that and we just think that we should be entitled to a directed verdict of nonsuit.

THE COURT: So what's your view, Mr. Hendrix, on Mr. Fournier's opinion as to why the secondary safety mechanism was needed in this particular case?

MR. HENDRIX: I'm sorry, can you repeat that, the first part of that.

THE COURT: Well, I guess what I'm asking you is what's your view of Mr. Fournier's testimony again as you acknowledged, having viewed it in the light most favorable to Mr. Hogan, Mr. Fournier's opinion about the hydraulic. In other words, as I understood his testimony, his opinion was that the cause of the accident was inadequate secondary safety in place. There should have been better secondary backup safety.

So why -- why did we need it in this case; you're saying there's no evidence other than speculation that the initial safety feature failed.

MR. HENDRIX: Well, I don't know that we did the -- because there's no indication that the first one -- the first system failed, quote, unquote, and if Mr. Hogan did something to cause it to give way, then, you know, you can defeat anything. And I -- and I hate to sound crass because I actually on a personal level, like Mr. Fournier. I had an occasion to run into him somewhere and shot the breeze a little bit with him otherwise, but he was -- that testimony was what he was paid to say and I actually think that it is just that, an opinion as opposed to evidence. And I don't know that his opinion in and of itself without other evidence is sufficient to base it on.

I'll say it again, I think his opinion is based on some speculation because I don't think it's enough. You can always say that something better could be done and that is not the standard that we have to look at and I do think that's essentially what he's saying in this case is you could have done more, even though it had never failed; I'm remembering the best I can what Mr. -- because we haven't had any other testimony, remembering what Mr. Corder said.

You could, in the light of the testimony that he's never had any failure like this or given way before, that it gave way this time with absolutely no explanation of why the machine, which is admittedly capable of holding it and not giving way, why that didn't prevent the accident from happening, which reluctantly Mr. Fournier admitted, yes, if it didn't have a defect, it would have held it up; we wouldn't be here.

He was reluctant in doing it and like I say, you can always argue there's something more, but I don't know that that really constitutes evidence that, that there was negligence on the part of Coder and Sons because they didn't do more. I think there's been some indication of what's reasonable and we believe that they recognized before all this took place that well, it's a good idea to have something under there and they had something under there that would hold it. And the testimony thus far has

been, and I expect it to continue if we have to go forward, but hopefully we won't, that -- that this was adequate to hold it, there's never been any wobbliness or anything like that. This was adequate and even Mr. Fournier said as far as the compression strength of the axle, he had no problem with that, at least that's what I recall him saying.

So under all the circumstances, did they act reasonably? We think the inescapable conclusion is they did. You know, with hindsight, could maybe something have been done more to protect Mr. Hogan from himself; possibly that's the case, but that's not what we have to -- that's not what should be looked at in the courtroom.

I hope I answered the question. If not, if you redirect me, I'll try to.

THE COURT: Well, no. I mean, I think everything you said is relevant and interesting. I'm just curious as to why -- I'm not really articulating it precise enough or understanding properly. But I guess my question is, what -- what relevance is this testimony about hydraulic and leak; in fact, I think there's testimony this morning from one of the ladies about someone talking about a leak and then that she saw something on the booms that was indicative of a leak or appeared to be consistent with a leaking -- a leak of fluid. So --

MR. HENDRIX: I think she described it as grease

when asked, it looked like grease.

THE COURT: Okay.

MR. HENDRIX: And the testimony since then, including from Mr. Fournier was, that's where you would expect grease to be.

THE COURT: Right. Okay. I understand that, but I mean, again, we're looking at it most favorable to the plaintiff. But I'm going back to my original question and not very artfully, but does there have to be evidence sufficient to -- from which the jury can infer that the first line of defense to keep this truck from falling failed and that failure was due to the negligence of the defendant?

MR. HENDRIX: I think that the burden is on the plaintiff of proving his case. I think that that is something that they do have to, I believe they have to address it. I kind of would analogize this to medical malpractice. You know we're in a situation here and you've got no explanation for why it happened, then the fact that there's a bad result doesn't mean that there's malpractice. Well the same thing here is they had a, you know -- what caused the initial system to fail? If the plaintiff caused the initial system to fail and otherwise it should have been adequate to keep the load from falling, then he's got some substantial part to play in the cause of this accident

despite the opinion of -- of the expert, Mr. Fournier.

And I do think they have to address that and they have not. They've got nobody whose testified for them has got any idea or any explanation as to how or why this failed and there's been no evidence to the contrary of what Mr. Corder testified that it worked -- if I use the word perfectly, that may be overstatement, but it worked great beforehand. It worked great the next day when the son came to move it. It hasn't given any problems since then. So you know, it would be speculation, pure and simple, to allow, the jury would have to speculate to find that a hydraulic leak contributed to this or that something other than Mr. Hogan causing this failure and by his own admission, he set the thing up so if it was improperly set up, the axle to hold it, that would be on him and really the evidence is that most probably, he's the one that set it up and it was set up improperly and that that's what caused the thing to happen. The fact that there might could have been more done in and of itself, doesn't get around that and we submit that doesn't mean that you just ignore all that, all the other negligence because possibly more could be done.

I suppose more can be done in every situation, but--

THE COURT: But what was the import of Mr.

Fournier's expert testimony about the ANSI standards; I mean, can you address that?

MR. BUNCE: Certainly, Your Honor. I believe that the issue, and it depends on where you see the negligence and that was Mr. Fournier's testimony is that the negligence happened when the whole procedure was designed. Mr. -- Mr. Hogan, our position is that yes, he did set this up improperly because he was taught to set it up improperly. The whole procedure was faulty. Using an axle as a support mechanism is totally inadequate and that was Mr. Fournier's testimony.

THE COURT: Well, did he say about the ANSI Standards and the rough terrain forklift operation specifically. Just refresh my memory; he tied it to a specific standard and I --

MR. BUNCE: One of the ANSI standards was that you're not to work under -- under a suspended load without adequate --

THE COURT: Okay.

MR. BUNCE: -- and that is the standard which we tied this all to.

THE COURT: Okay.

MR. BUNCE: That is the failure here. There was a -- there was a standard -- there was a standard about blocking and how that should be done.

THE COURT: Yes.

MR. BUNCE: There were rigging issues with regard to, I'm sorry, there was an ANSI standard that had to do with the qualifications of persons who can design rigging and what -- and who is qualified to set up a rigging operation.

THE COURT: He said you had to have two points of support.

MR. BUNCE: Two points of support.

THE COURT: And you had to have a secondary, and that includes a secondary blocking and safety mechanism; the defendant didn't do that and that caused the accident; that's -- I mean, my notes are certainly fallible, but that's essentially --

MR. HENDRIX: Your Honor, I think he said that, but I think the opposition is that's his opinion.

THE COURT: Yeah.

MR. HENDRIX: That didn't come directly from an ANSI standard as I recall.

THE COURT: All right. Well, okay. I guess what I'm struggling with, I -- there was a case a while back that involved a hospital where a lady came in to visit a patient, there was a painting in the room, the lady sat down underneath the painting, the painting fell off the wall and hit her in the head and caused damage and the

Court of Appeals, it's unpublished, said that that should not have gone to the jury because it was a res ipsa. There was no evidence about what caused the painting to fall. How is this case different?

MR. BUNCE: Well, sir, the -- there was testimony about what could have caused the vehicle to fall. That the situation of loading, the demonstration he gave about how -- how it would have -- if the forks were tilted, how that could have done that. The -- the -- the conclusion that one has to reach here if -- if they are to believe that Mr. Hogan was holding and set up the brace and he was running a machine, is that he would not be able to see what was happening there. The procedure that he was taught to use -- to use that single brace, was faulty and -- and the, that is the -- that is where the failure happened here, Your Honor.

The -- and I'm sorry, I'm trying -- trying to tangle it out here, but the -- I believe simply it's a matter of focus on where the problem is and that -- and that essentially it -- this is different. That is not just speculation alone. There was testimony from Mr. Hogan that the -- the SUV was rocking before it fell. And so that combined with it -- that combined with it show that the process that he followed -- and all the testimony that has been in is that he has followed the procedure that he was

taught. And so that procedure led to a situation where the SUV was actually able to rock while he was working on it. It was inadequate because of the points -- of the failure to block at two different points.

THE COURT: Okay.

MR. HENDRIX: Now, Your Honor, I don't think that there was any ANSI standard or anything like that that says that kind of thing is mandated. What you've got to do is to have it reasonably unlikely to fall. From the experience of these folks over many years -- maybe now -- I don't know how long they've been using, I don't think we got an exact date on this piece of equipment, the axle, but for many, many years it's been used with absolutely no problem. I do think that your point is well taken. I have not seen the unpublished case that you referred to, but I do think it is extremely similar in that what they're saying, we don't know what caused it to fall, what caused this thing to fail now, but it failed; therefore, more could have been done and -- therefore, they're at fault in causing this accident. Well that's just not the way -- that's not the legal cause of the accident we submit and what might have caused the -- the initial system to give way to start with is based -- would have to be based on pure speculation because I directly asked Mr. Fournier, you don't know what caused it to fail, do you. And he said, I

don't know. And he said that in his deposition and he said it again today. So I mean he just doesn't know. They've got utterly and absolutely no explanation for it, which I submit to you is the same as saying in the case you referred to, we don't know what caused the picture to fall, but just once it fell, they should have had some wood under it or a frame built around it and maybe cables coming down from the ceiling.

Well, apparently the Court of Appeals decided all that wasn't necessary and I'm telling you that we think it's very, very, similar here. So similar that we're going to ask Your Honor to dismiss the case on a nonsuit.

THE COURT: Okay. Well. I'm going to think it over during the recess. I do see some differences, but I'll have to let it set a little bit in my feeble mind over night. So we'll reconvene at 11:00 tomorrow. Thank you.

MR. HENDRIX: Your Honor, you wouldn't happen to remember how long ago that case was, would you, the unpublished one.

THE COURT: Mr. Hendrix, the only reason I remember it is because I got reversed and you know what they say; it's the bit dog that barks.

MR. HENDRIX: Oh yes. We're going to give you an opportunity -- I was kidding, Your Honor.

THE COURT: I'll find it somewhere. It hasn't been

that long.

MR. HENDRIX: Okay.

THE COURT: Maybe within the last year.

MR. HENDRIX: Thank you, Your Honor.

THE COURT: Thank you.

(Court was in recess for the day.)

WEDNESDAY, JANUARY 6, 2016

THE COURT: I apologize for the delay. The matters that I had to attend to in Columbia took much longer than I anticipated. I'm sorry to inconvenience everybody. It was out of my control.

We were arguing a directed verdict motion yesterday afternoon and I'm going to deny the motion. I find that in the light most favorable to the plaintiff in viewing all the inferences and ambiguities in the plaintiff's favor that there is sufficient evidence to send the case to the jury on a negligence theory. Unlike the picture frame, the picture case, here the defendant, through Mr. Corder's testimony and Mr. Hogan's testimony, established that they foresaw they needed a backup safety device to keep the vehicles from falling on workers. So they had that in place.

The opinion of the expert was that the plan they had in place was not sufficient and not reasonable and was the cause of the accident. So I think they have satisfied

the elements of negligence if the jury believes it, but I can't weigh the credibility of the testimony, I'm just determining whether it exists and I find it does.

All right. Anything further before I bring the jury in?

MR. BUNCE: Nothing from the plaintiff, Your Honor.

MR. HENDRIX: Nothing from the defendant, Your Honor.

THE COURT: Okay. And you're -- you want to rest in front of the jury and then turn it over to Mr. Hendrix?

MR. BUNCE: Yes, sir, Your Honor.

THE COURT: Okay. Yes, sir.

(The jury entered the courtroom at 1:05 p.m.)

THE COURT: Okay. Ladies and gentlemen, I apologize for inconveniencing everyone. I had a matter in Columbia that I had to attend to and it's been set for some while and it lasted much longer than I thought. So I'm sorry to inconvenience y'all earlier today. I thought we would be done by 11:00, but we didn't get done until about 11:30 and so here we are.

So, yes, sir.

MR. BUNCE: The plaintiff rests.

THE COURT: Okay. So that means the plaintiff has completed his presentation of evidence in the case and now is the opportunity for the defense to present any witnesses

they wish to.

So, Mr. Hendrix, yes, sir.

MR. HENDRIX: May it please, Your Honor, we would call Chad Reeves to the stand.

CHAD REEVES,

having been duly sworn, testified as follows:

THE CLERK: Have a seat, please, and state your name for the record.

THE WITNESS: My name is Chad Reeves.

DIRECT EXAMINATION

BY MR. HENDRIX:

Q Mr. Reeves, by whom are you employed?

A Blanchard Machinery.

Q What does Blanchard Machinery sell?

A Heavy equipment.

Q Does it also work on it?

A Yes, sir.

Q Tell the jury what experience you've had and familiarity you have with heavy equipment including a Caterpillar 924-F, I believe it is, front-end loader that is shown in Plaintiff's Exhibit Number 9?

A I have over 20 year's experience in heavy equipment. I work -- I've worked on them for over 10 and I currently sell parts for them now.

Q Have you ever worked on any 924-F's -- not

particularly that one, but on them in general?
A Several, yes.
Q And have you had to work on the hydraulic systems and the lifting systems and all that?
A Yes.
Q Do you know what can go wrong with them and how they operate?
A Sure.
MR. HENDRIX: Your Honor, we would offer him as an expert in the field of the heavy equipment and specifically the 924-F Caterpillar and the operation and also the repair and what can go wrong with the lifting system?
MR. BUNCE: No objection, Your Honor.
THE COURT: Okay. All right. Go ahead.
BY MR. HENDRIX:
Q What causes the -- or what allows the 924-F to be able to lift something whether with forks or with the front-end bucket?
A The hydraulic cylinders which are in this picture, you got your two cylinders here for the lifts, one cylinder on the top for your control.
Q Okay. And when you do that, you're doing your hand up and down when you say control --
A That's your tilt control.
Q Tilt control?

A Tilt.
Q Tilt control of what?
A Either a bucket, forks, or whatever attachment you have on the front of the machine.
Q Is it fairly common for these machines to have forks put on them in place of a bucket?
A Yes, very common.
Q Okay. That's something that y'all accept is going probably happen to some of them; is that right?
A Correct.
Q Now while you got the picture, I wanted to ask you one thing. I'll try to get over here. Do you see where my finger is? There's a yellow something and it's got looks like I'm going call it dirt or something dark on the end of it and then there's a silver pipe or rod that goes out; what is that?
A This is -- this is the cylinder rod. The silver is the rod, this is barrel of the cylinder. This makes up a complete hydraulic cylinder.
Q All right. Would you expect to see lubricant of some sort on there?
A Yes.
Q Would you expect to see it around the edges of it?
A Yes.
Q Would that probably be the residue of it, the dark

stuff that you see?
A Correct.
Q All right. And that would be -- if it's working perfectly, you would expect to see all that?
A (The witness nodded his head.)
Q Is that a yes?
A Yes, sir.
Q Okay. And it's right here; is that correct?
A Yes.
Q Now if a previous witness had testified that they saw something, some sort of grease or something on there that would be expected?
A Well, you've got lubrication joints all over the front end of the machine that tie to the cylinders. So you could have some residue from petroleum, the grease that you use that goes down the cylinder. So there would be some residue on the cylinders theirself.
Q But it would probably be unusual not to have some of that?
A Yes, unusual.
Q There's been alleged that there was an accident involving this machine. For the sake of -- and you weren't here to hear the testimony, but if you assume for the sake of this question -- well let me ask you this: How can the lift fail if it's got something, weight on it, say an SUV

or a Suburban vehicle and it's got it lifted off the ground, the testimony has been maybe 5 feet, 5'4" or something. What can allow that machine to fail and lower the load or have something happen to it?

A The only way it would do it would be catastrophic failure from a cylinder, hose, or human error.

Q When you say human error -- well first of all, let's go back. You said a catastrophic failure of a hose or a cylinder. Tell the jury what that would involve and whether or not there would be some evidence that that had happened?

A If the cylinder, if the cylinder were to fail, there would be oil everywhere covering the front of the machine, covering the whatever is on the forks. If a line was to break, a hose, it would do the same thing. It would not be just a minute amount of oil, it would be gallons, 5 to 10 gallons of oil would be all over the front of the machine, all over the ground. That's really the only two -- the only thing that could fail.

Q Okay. If there was been no testimony whatsoever that there was this large amount of fluid on the ground, what would that tell you about how the machine was operating as far as the lift is concerned?

A What -- say that again now.

Q All right. If you assume that -- that the

testimony has been nobody's mentioned large amounts of hydraulic fluid on the ground, on the machines, on the SUV, anywhere else, if there's none of that, what does that tell you about how the lift system was working when whatever happened at Corder and Sons happened?

A That it wouldn't be any evidence of a problem with the machine.

Q No problem with the machine?

A No problem with the machine.

Q What's the only other thing that would make the forks tilt down if it did not have such a failure as you've described?

A Someone moved it, manually moving the controls.

Q If you assume for the purpose of this question that it was the practice at Corder and Sons when they had a load on the forks to put a steel axle up under it, if you assume for the sake of this question that the steel axle was strong enough that the weight would not compress it and cause it to then break in and of itself and if you also assume that somebody was going to take the lever that controls the tilting of the forks and push down on it, could that -- cause the axle to, when I say fail, to kick out from under it or something to happen to it?

A The machine is strong enough to tear up as much it is to lift. So if you manually push down on it, it's

automatically going to push down. It's only going to do what you tell it to do. So if you have something there to support, it'll support.

Q How much can this lift?

A This machine here can lift 15,000 pounds.

Q Do you know how much a, I'm going to say an average SUV or a Suburban would weigh approximately?

A 46 to 5300 pounds.

Q All right.

A Somewhere in that neighborhood. This is capable of doing three times what that vehicle weighed.

Q All right. And you say it's capable of tearing up as well as lifting up?

A (The witness nodded his head.)

Q If you were to have one of these posts under each of the -- one of these pipes, axles, something similar to that, under each of the forks, is the machine strong enough that if you pushed it down and put enough pressure from the forks on that, would it cause both of those to fail?

A It could, yes.

Q Okay. If you had a -- a frame built and had it on top of the frame and pressed down with the forks, would it be strong enough if the frame was made out of mostly wood, say 10 x 10's or something; is it strong enough to tear that up?

A It is. Yes, it is.

Q Okay. Is it strong enough to tear up, if the operator so directed it, tear up any reasonable secondary safety device used to prop it up in case there was a failure of the machine?

MR. BUNCE: Objection, Your Honor. That assumed, it's calling for speculation. He hasn't defined what a reasonable secondary safety mechanism would be.

THE COURT: I sustain the objection.

BY MR. HENDRIX:

Q If you assume that a reasonable system would include maybe two pipes out towards the end, the tip of the -- maybe within a foot of the tip of the forks and even if they were attached somehow by strapping or something, is the machine strong enough to cause that to fail?

A It is.

Q Okay. Is there any way that this machine would have failed and let the forks come down if it had been a failure and not the lift arms come down; do you understand what I'm saying?

A Let me just -- you're saying is there any way for the forks theirself to move versus everything to move?

Q With a failure.

A No. If you have a failure, it's going to affect the whole system.

Q Well, let me ask you to be more specific. I'm going to show you what has been marked as Plaintiff's Exhibit 9 and you see that the -- the lift arms, the yellow things here, are up in the air to some degree; is that correct?

A Correct.

MR. HENDRIX: Excuse me, Your Honor, if I may show the jury.

BY MR. HENDRIX:

Q Are you saying that if there was a failure of the machine as you have described that these lift arms would not be in the air?

A They would go down as well.

Q All right. If they went down as well, I'm going to show you what has been marked as Plaintiff's Exhibit 1, would it be resting in a similar position to that?

A A similar position, yes.

Q All right. In other words, the forks would be flat on the ground and the arms would be down. So what does the fact if this is a rough or -- and I'm referring now to Plaintiff's Exhibit 9, if this is a rough approximation of the way it looked -- in other words, the lift arms were 5 feet, 5'4", but the forks were tilt down -- tilted down, does that tell you anything about whether or not there was a machine failure?

A No, sir.
Q Well, when you say no, sir, what do you mean?
A Well, by that, just by that picture there's no evidence of a machine problem. Just like I stated earlier, if there was a failure, there would be excessive amounts of oil over the ground, all over the machine.
Q And would this -- would it be in a raised position if there had been such a failure?
A It would be in a lowered position.
Q It would have been not like Exhibit 9, but in the position of Exhibit 1?
A One.
Q Okay. If you had said it was like that afterwards and there was all kinds of hydraulic fluid and I'm referring now to Plaintiff's Exhibit 1, that might be evidence of some failure?
A Correct.
Q But not the no fluid and the lift arms off the ground, are up -- that's absolutely not evidence of a machine failure?
A Not evidence, no.
Q Okay. If an operator were to tilt the, use the lever to tilt the forks while the machine lift arms were off the ground and if you had the axle that I referred to up under one of the forks and there was a to be a failure

of that -- in other words, the tilt -- tilting using the power of the machine were to cause the axle to give way or kick out, how quickly would you expect that to happen?

A Instantly. Before you could get out of the machine, it would be instantly.

Q Okay. So you wouldn't expect to sit there 10 minutes or 4 minutes or anything like that?

A No.

MR. HENDRIX: Begging the Court's indulgence for one moment?

THE COURT: Yes, sir, take your time.

(There was a pause in the proceedings.)

BY MR. HENDRIX:

Q If you assume that the machine has not had a failure as you've described the failure would look like or the evidence of it and it was sitting on this axle and the machine was still operational, how long could it stay in that position?

A Until you moved it.

Q Well, I mean what about if it was 24 or 48 hours?

A It would stay. If it was set on that axle that they're saying was the stand, it would sit there. It wouldn't move until you manually moved it away from where it was sitting.

Q If you rest the fork down and put most of the

weight of the SUV, most of the -- I think you said 46 to 5300 pounds on the -- the axle -- how difficult would it be to, without using the tilt or without using the power of the machine, how difficult would it be to get the axle out from under there?

MR. BUNCE: Objection, Your Honor. I don't think he's laid any foundation for, for this hypothetical, there's no evidence of friction, there's the angles, there's a whole lot of things involved here, Your Honor.

THE COURT: How would this be within his expertise, Mr. Hendrix?

BY MR. HENDRIX:

Q Can you answer, how difficult would it be to get the axle out from under it if --

MR. BUNCE: Objection, Your Honor.

THE COURT: My question was, to you was how, how is that relevant to this expert's field?

BY MR. HENDRIX:

Q Well if I could ask him if you know?

A Well, with the axle, I don't --

THE COURT: Yeah. I sustain the objection.

MR. HENDRIX: Okay. That's fine.

THE COURT: I sustain the objection.

MR. HENDRIX: That's fine, Your Honor.

Your Honor, I don't believe I have anything else.

Answer any questions that Mr. Bunce may have for you. And be as nice to him as you have to me.

THE COURT: Cross-examination, Mr. Bunce?

MR. BUNCE: May I approach, Your Honor?

CROSS-EXAMINATION

BY MR. BUNCE:

Q I show you what's been marked as Plaintiff's Exhibit 16, Mr. Reeves. Have you seen this before?

A No, sir.

Q Okay. If I represent to you that's the axle that was being discussed, does that look like an axle to you, sir?

A That's a tube, a piece of metal tubing that could be used as -- excuse me. It could be used as an axle. I mean, I've seen them used as an axle before, but this, not in this picture.

Q Okay. Can you tell what, does the term compressive strength mean something to you?

A Uh-huh (affirmative response).

Q Okay. Can you tell the compressive strength of the failure point of that axle would be?

A No.

Q So -- so how can you say that it would necessarily fail by pushing down on it, sir?

A Well, the machine itself is capable of lifting

15,000 pounds. It's capable of pushing that 15,000 pounds as well.

Q Certainly, but -- but some -- some metal objects are capable of sustaining 15,000 pounds?

A Sure.

Q Are you -- are you -- is it your opinion that you're telling the jury that that -- that axle can't sustain 15,000 pounds?

A I'm not -- I'm -- the stand that they're using -- all I've done is tell them what the machine is capable of doing.

Q Okay. Well, I'm just asking if your opinion is actually based on your knowledge of what the -- the axle can hold?

A I don't -- I'm not -- I don't know about the axle.

Q Okay. So you can't really say whether or not the machine would cause that axle to fail if it was pushing down?

A Not by this piece of metal here. I don't know what this metal is rated at to hold.

Q Sure.

A I'm just going by what the machine is capable of doing.

Q All right. And the stand that we're talking about, you know what it's rated at?

A No, sir.
Q Okay. So how could you say that the machine can necessarily cause it to collapse?
A Well it's made -- he described it as being made out of wood; it's not. Like I said, the machine is capable of moving that much weight. It's capable of applying that much pressure to move that much weight.
Q Okay. But you can conceive of a stand that could hold 15,000 pounds, correct?
A Say it again.
Q You can conceive of a stand that can hold 15,000 pounds, correct?
A Well, I mean would it have to hold 15,000 pounds; I mean the car only weighs 5,000 pounds. I mean it's kind of --
Q Sure, but what I'm getting at, sir, your testimony was that -- I believe is that that Cat can push down so much that it's going to cause any stand to fail?
A No, I didn't say not any stand to fail, no.
Q Okay. But the stand that you've seen then?
A No. I haven't seen this before.
Q Okay. Well what about a wooden stand?
A I haven't seen a wooden stand.
Q All right. Can you testify at all about whether the Cat pushing down with its full power would cause

anything to fail, in particular in this case?
A Sure, I mean, you know, if you put this cup under it, it'd mash the cup. This piece of pipe, if you put it in the dirt, stand it in the dirt, it would press it into the ground.
Q Okay. All right. But it wouldn't necessarily make this axle buckle?
A I don't know. Just by the picture, you can't tell.
Q Okay. And it wouldn't necessarily make a wooden stand buckle; is that correct?
A It depends on what it's all made out of.
Q Okay. But you -- you -- it would depend on what it's made of, certainly. All right.
And I wanted to ask you about the operation of hydraulics then and what -- so say there is an item standing up, a bar of metal and the operator pushes down on that bar of metal with the forks, all right, and continues to apply force or continues to apply the lever, correct, it's going to put additional load and push down further on it, correct?
A Correct.
Q All right. When you turn off the vehicle, is it going to continue to push down on that?
A No, it'll stop.
Q Okay.

A When you shut the machine off, whatever you set it at is where it's going to stay.
Q Right, but it was continuing to push down, correct?
A While it was running.
Q Okay.
A While you're operating it, it will continue to push down.
Q Okay. The hydraulic pumps are trying to push fluid into there, correct?
A It's not going to do anything unless you move the lever, the controls.
Q All right.
A To apply, the lift, the lower the tilt or to roll back, you control all that function.
Q Yes.
A The machine is set and running idle and you're not touching the controls, the controls are not doing anything.
Q Yes.
A If you put it on a car or pick a car up, let off the lever, it's going to hold it.
Q Okay. But if you push down on something with the forks and you turn it off, does it level back up; does it stop pushing down?
A It stops pushing force when you release the levers.
Q Those pumps, do they have a way of releasing the

pressure then?
A Yes, they have relief valves.
Q Okay. And so the relief valve, how does it know how much force to take off of there?
A It won't take force off. When you let off the controls, if you have applied pressure, it still holds the pressure.
Q Okay. All right. So if it's pushing down, it's going to continue pushing down with the same amount of force when you turn it off; is that correct?
A It'll hold that pressure when you turn it off.
Q Okay.
A When you let off the controls, it goes to neutral.
Q It goes to neutral so it releases the pressure --
A It doesn't release the pressure back. It still holds the pressure here, but it stops, it allows the flow of the hydraulics when you release the controls back to neutral. You still have your pressure applied here, whatever force you put down. Just like when I said while ago, if you picked a car up and you're holding the car here --
Q Uh-huh (affirmative response)?
A -- you let off the handles, it's still going to hold it here; it's not going to let it fall. It'll still hold here until you manually move the controls.

Q Sure.
A If you cut the machine off, it's still going to hold here.
Q Sure. And that's true whether something prevented it from getting to the place it wanted to get to, the hydraulics?
A The only way you're going to do it is when you manually move the hydraulics, the controls.
Q Okay. You ever -- let me ask it this way: In operating one of these loaders, sometimes you put the bucket down, correct? And you push the bucket down to the point where the wheels come off the ground, correct?
A Correct.
Q Take off the controls, turn it off, does the wheels stay up in the air?
A Stay up in the air?
Q Because it's continuing to apply downward force, correct?
A It's put -- it's not continuing to put it -- it's holding that --
Q It's holding what you apply.
A It's holding what you apply.
Q Okay. Excellent. The -- have you inspected this unit here, sir?
A Just by the pictures.

Q Okay. And -- and you work for the same company as Robert Corder; is that correct?
A Yes.
Q Okay. That's all the questions I have.
MR. HENDRIX: Your Honor, just very briefly.

REDIRECT EXAMINATION

BY MR. HENDRIX:

Q Mr. Bunce asked you a bunch of questions about the, the axle and pushing down and the -- the compressive strength and all that. If it were to fail, would you expect it to squash or you know, crush straight down the axle; would there be some other way that you would expect it to fail if you were tilting the forks and not just coming down straight?
A If you're tilting them like if you're tilting th force on the axle --
Q Right.
A -- it wouldn't, it really wouldn't mess, it would -- basically the angle of it would shoot the axle out from under it versus compressing it.
Q Okay. And that's what you're talking about it being able to cause it to fail?
A Yes.
Q Not that you would squash it and just make it crush up like a --

A You wouldn't crush it like soda can, no.
Q Okay. Thank you. I don't have any further questions?
THE COURT: Recross?
MR. BUNCE: No, Your Honor.
MR. HENDRIX: Your Honor, we'd ask that this witness be excused.
THE COURT: Any objection?
MR. BUNCE: Oh, no.
THE COURT: Okay. Sir, you're excused. Thank you very much.
MR. HENDRIX: Your Honor, we call Mr. Pat Hartley.

LINDSEY PATRICK HARTLEY

having been duly sworn, testified as follows:

THE CLERK: Have a seat and state your full name for the record, please.
THE WITNESS: My name is Lindsey Patrick Hartley.

DIRECT EXAMINATION

BY MR. HENDRIX:

Q Mr. Hartley, I'm going to ask you a few personal details to just sort of let you introduce yourself to the jury. How old are you?
A 48.
Q And who do you work for?
A I actually work for myself.

ROBERT CORDER,

having been duly sworn, testified as follows:

THE CLERK: Have a seat and state your full name for the record.

THE WITNESS: My name is Robert James Corder. I go by Bubba.

DIRECT EXAMINATION

BY MR. HENDRIX:

Q Is it okay if I call you Bubba?

A Yes, sir.

Q What is your relationship to Mr. Harold Corder?

A That's my father.

Q And I believe that you know that he started the salvage business many years ago; is that correct?

A Correct.

Q Did you go to work there full time for a while?

A Yes, sir, from 1989 to 2005.

Q And in 2005, what -- where did you go to work after that?

A I went to work for Blanchard Machinery.

Q Is Blanchard Machinery now what I can call your day job?

A Yes, sir.

Q You go there Monday to Friday?

A Yes, sir.

Q What do you do on most Saturdays?
A I go to the salvage yard and do stuff around there and keep the books.
Q All right. Who keeps all the books for the salvage yard?
A I do.
Q All right. Since you got there and started running the place or maybe shortly thereafter in 1989, who has kept the books?
A I have.
Q Has your dad messed with that at all in that period of time?
A No, sir.
Q At my request, have you checked all of your records for the month of February 2011 as far as what sales were made and receipts issued and that sort of thing?
A Yes, sir.
Q Was there any indication in any of those records, a payment for an engine at all?
A No, sir.
Q No?
A No, sir.
Q Back during that period of time or really any time that you can recall, was it ever the practice for Corder and Sons to accept deposits on something like an engine?

A No, sir.
Q Okay. So you wouldn't do that; you might pull the engine and if the person didn't come, you'd just store it until somebody else wanted to buy it?
A Yes, sir.
Q Have you found any evidence that anybody paid a deposit or paid for an engine in the month of February, 2011?
A No, sir.
Q Was there a period of time that you understand that Mr. Hogan is claiming he was injured when he had, there was a Suburban lifted up on the Caterpillar 924-F front-end loader with the forks on it and that he got injured and he has said in court that he was in the process of taking an engine out of a Suburban?
A Yes, sir.
Q Are you familiar now with that Suburban?
A Yes, sir.
Q Had he called you to ask you about a price for the engine in that Suburban during the month of February of 2011 for anybody?
A No, sir.
Q Did at some point in time, before the accident, he call you about an engine for his own vehicle?
A Yes, sir, his truck had failed and he needed an

engine to put in it.
Q Would the engine in that Suburban SUV have been one that would have worked in his truck?
A Yes, sir.
Q Who first hired Mr. Hogan?
A I did.
Q Do you remember approximately when? And I'm not asking you to be exact on the date, but roughly when did he first work for you?
A Jerry's worked for me quite a few times off and on through the years. I imagine the first time was around '97, '98, somewhere in that time.
Q All right. By the way, about when did -- did you purchase the 924-F Caterpillar?
A We purchased it in 1997.
Q Okay. And I believe it was a 1995?
A A 1995 year.
Q That was the model of the --
A The 924-F.
Q All right. When Mr. Hogan came to work for you, do you know whether he'd ever worked in a salvage yard before?
A Yes, sir, he'd been around different salvage yards working on, he'd done auto mechanic work too at different places.
Q Okay. Did you understand from him that he had

experience?
A Yes, sir.
Q In doing salvage work?
A Yes, sir.
Q Did you ever see him operate the 924-F Caterpillar front-end loader with the forks on it?
A Yes, sir.
Q Had you ever had him assist you in lifting a load and putting the mobile home axle under the fork to help hold it in case there was a failure; had he ever helped you do that?
A Yes, sir, many times.
Q Had he ever been the one to operate the -- the lift or the 924-F Caterpillar while that was going on as far as you ever saw?
A No, sir, I always operated the machine and he would set the pole.
Q But you had seen him moving the, the 924 Caterpillar around the yard or moving cars and stuff?
A Yes, sir, he would help me when I was tied up.
Q Was it your understanding from Mr. Corder (sic) that he'd had experience operating heavy equipment in other jobs that he'd had?
A Yes, sir, he'd worked with SP Grading.
Q Okay. Approximately when did you start using the

mobile home axle and where did you get the idea for that? What caused you to start doing that?

A I visited other junk yards long before I went into business with my dad and over at Billy Walker Salvage in -- South Carolina. They use the same similar thing and also at Joe's Auto Parts.

Q Joe's Auto Parts; what's that near?

A Joe Hartley; he's auto salvage also in Leesville.

Q Okay. So it wasn't an incident where something failed that caused you to do it, you just saw them doing it and -- and at -- at least two other yards and decided well it must be a good idea to try it?

A We thought it was safe at that time.

Q Okay. While you were doing the -- the lowering onto the mobile home axle and using that as a brace, was there ever any occasion where that failed?

A No, sir.

Q Never?

A Never.

Q One more thing I wanted to ask you. There's been some talk of when people at Corder and Sons were paid. Was there ever any regular policy of paying people at lunchtime?

A No, sir. We got paid at five. My dad come from the old school. You'd work, you earned what you got and

you got paid at five o'clock unless you were getting off and going somewhere.

Q Okay. And if you were then you might get paid early?

A You might get paid early.

Q As far as at Corder and Sons, what training would Mr. Hogan have received as far as lifting a load and putting the axle underneath it?

A Just the way we done it together. We -- I would always work the machine and he would set the pole up properly.

Q Had you ever suggested to him that it was okay or all right to try to have one person do that?

A No, sir. One man can't do it; it's a two-man operation.

Q To your knowledge, was there ever any problem with this loader before this accident?

A No, sir.

Q How soon after the accident did you use the loader? And I believe that the accident testimony has been that it occurred on February the 18th -- Friday, February the 18th, 2011; how soon after that did you operate the machine?

A The next morning on Saturday.

Q Okay. When you got there, what did you do as far as the machine?

A Once I got there and started to work, I cranked the machine up and leveled the car off and went to work.
Q Was there any indication that there was any problem or had been any problem with the machine?
A No, sir.
Q Did it work just like it always had?
A Yes, sir.
Q When you got there that next morning, was there any -- and you heard, excuse me -- you heard Mr. Reeves testify; is that right?
A Yes, sir.
Q You heard him testify about what he would expect to see if there had been a 924-F Caterpillar failure that would cause the forks or anything to go down; you heard that?
A Yes, sir.
Q Was there any evidence whatsoever out there that any such thing had happened?
A No, sir.
Q Do you think you would have noticed 5 to 10 gallons of hydraulic fluid spewed around and on the ground and on the machinery; do you think you would have noticed that?
A Yes, sir and noticed it right off the bat.
Q And you did not?
A No, sir.

Q Who hired Mr. Hogan?
A I did.
Q What made you decide to hire him?
A Mr. Hogan was without a job and he had a family and my dad needed a little help and he needed a job and I went and asked him if he would like to work some and he said yes, he needed to work.
Q Okay. Did you and your father visit Mr. Hogan in the hospital?
A Yes, sir. Yes, sir.
Q How did he seem to be doing when you visited him in the hospital?
A He was happy-go-lucky, sitting up, cutting up with us and just like normal Jerry.
Q At that point, did he mention his back?
A No, sir.
Q What did he tell you he was doing?
A At the time of the accident.
Q At the time of whatever happened?
A He said he was removing a starter.
Q He didn't tell you anything about an engine?
A No, sir.
Q Okay. He said he was removing a starter?
A Yes, sir.
Q Do you remember there was evidence that a starter

was in the process of being removed?

A Well there was no tools there the next morning when we got there is the only thing I can tell you.

Q Okay.

A No tools laying on the ground or nothing where he would have been working.

MR. HENDRIX: Your Honor?

THE COURT: Yes, sir.

MR. HENDRIX: Begging the Court's indulgence a moment?

Your Honor, I don't think I have any further questions at this time.

THE COURT: Cross examination, Mr. Bunce?

MR. BUNCE: I beg your indulgence, Your Honor.

(There was a pause in the proceedings.)

CROSS-EXAMINATION

BY MR. BUNCE:

Q Mr. Corder?

A Yes, sir.

Q You were asked about some of your books and records there. Those records, are they kept in a bound ledger?

A Yes, sir, they're in books and then I transfer them to my computer.

Q Okay. And did you bring any of those books from February 2011?

A I have a copy of the computer report from the month of February, 2011, yes, sir.
Q Okay. But that's the computer one?
A Yes, sir.
Q Okay. The business there in the office, do y'all track phone orders?
A Phone orders, usually they write them down on paper, yes, sir.
Q Okay.
A What is ordered, it's done.
Q Is there a bound up book that it's put in?
A Not usually. It's usually just a paperback like a spiral book or something.
Q Okay. Something you can tear a page out of?
A Well, yes, sir.
Q Okay. Now when Mr. Hogan first started working for y'all, you're the one that trained him; is that correct?
A Yes, sir.
Q Okay. At that time, did you show him the operator's manual on that?
A No, sir, not on the machine, no, sir.
Q Did you show him any paperwork on how to operate it safely?
A Well, he usually didn't operate the machine. Most of the time, I did unless I was just tied up. He would

move stuff around sometimes.
Q Did y'all have any safety course out there for the salvage yard?
A No, sir.
Q Now if -- if someone said that -- that placing this could be done by one person, would they be wrong?
A Repeat please.
Q If someone testified that -- that this operation equipment axle underneath the forks could be done by one person, would they be wrong?
A One person can't do it. It has to be a person in the machine and one person holding the post.
Q Have you seen any of Mr. Hogan's medical records?
A No, sir.
Q Okay. Have you -- have you seen any of the transcripts of the doctors deposition or --
A Just what I heard yesterday.
Q Okay. And you doubt that that happened, sir?
A I have no idea how it happened, sir.
Q Let me show you what's been marked as Plaintiff's Exhibit 9 here. You seen this before, sir?
A Yes, sir.
Q Okay. Do you -- do you know how that picture came to be?
A No, sir.

Q All right. When you went out there, I -- when you said you went out there on Saturday?
A Saturday morning. It was after the accident, yeah.
Q All right. And you didn't go out on that Friday; is that correct?
A No, sir.
Q So Saturday did you take any pictures?
A My brother did, but his phone got, something happened to it. It had some of them.
Q That's all the questions I have.
MR. HENDRIX: I have one or two.

REDIRECT EXAMINATION

BY MR. HENDRIX:

Q You made mention of the computer records. I'm going to show you something and ask you if this appears to be a printout that you made at my request for the sales during the month of February, 2011?
A Yes, sir, this is every ticket that was wrote that month.
Q None of the items on there appear to be that big, but let me ask you this. What would you expect to receive when you, if you sold an engine such as was in that SUV that Mr. Hogan was working on?
A Around 750 to 850.
Q Okay.

A Hundred.
Q Are there any figures on there that come close to that?
A No, sir.
Q All right.
MR. HENDRIX: Your Honor, we would mark this as whatever the exhibit number is --
THE COURT REPORTER: 10.
MR. HENDRIX: 10?
THE COURT REPORTER: Yes, sir.
MR. HENDRIX: Plaintiff's Exhibit 10.
THE COURT REPORTER: Defense 10.
MR. HENDRIX: Defense 10.
Your Honor, can I show this to the jury?
MR. BUNCE: No objection.
THE COURT: It's in evidence. Yes, sir.
(Defendant's Exhibit Number 10 was entered into evidence.)
MR. HENDRIX: Your Honor, with that, I don't believe I have any further questions.
THE COURT: Okay. Cross examination?
MR. BUNCE: No recross, Your Honor.
THE COURT: All right. Thank you, sir. You may step down.
Mr. Hendrix, yes, sir.

MR. HENDRIX: Your Honor, that would be the Defendant's case.

THE COURT: All right. Ladies and gentlemen, I'm going to ask you to go to the jury room for a few minutes. Don't talk about the case and continue to keep an open mind. If you'll do me one favor while you're back there and select someone to be the foreperson of the jury and write their name down and give it to the bailiff, I would appreciate that and we'll see you back in just a little bit. I have to take up some matters with the lawyers.

Thank you.

(The jury left the courtroom at 2:06 p.m.)

THE COURT: Okay. Any motions at this stage.

POST-TRIAL MOTIONS

MR. BUNCE: Actually, yes, Your Honor. At this point, the plaintiff would move for a directed verdict on the defendant's defense of comparative negligence. Here the defendant is bumping up against the res ipsa problem, Your Honor. They -- as they pointed out yesterday, there is no testimony -- there is no evidence, of what caused it to tip.

Now the plaintiff's proceeding on a different, a different duty of care and a different way of establishing the breach, proceeding on a statutory, a regulatory duty that sets a different one for an employer. It says a

particular standard for an employer has to do with -- with hazards in the place of employment is free of recognized hazards. There is no corresponding duty on -- on an employee.

And so Your Honor, without any evidence of what Mr. Hogan did to cause his injuries, it shouldn't be submitted to the jury. There's simply no evidence that he took any action that caused it. There was no testimony that he was actually in contact with the SUV at the time, that it simply just started rocking.

THE COURT: I -- Mr. Hendrix, this is interesting.

MR. HENDRIX: Your Honor, I would join that so long as you grant the motion we made at the start and dismiss the entire case because that's what you ought to do in this case. If I can further say that we now have expert testimony that says there's only -- I'm going to narrow it down to two ways this could happen. If there's a hydraulic failure either with the cylinder or with the hose, but there was absolutely no evidence of that. And there's no evidence to say that's not right; that it wouldn't have 5 or 10 gallons of fluid everywhere. The only other way it could happen, according to the expert, is for somebody to do it and if they did it, it should be expected to happen quickly, not 5 to 10 minutes or something like that later and the only person that was out there to have done that

within the time frame would have been Mr. Hogan by even his testimony and even the, his witnesses testimony, Natasha Smith especially, and even his experts testimony who did say that based on the evidence, the most likely person that set this up was Jerry Hogan.

So if you consider all of that, it has to be operator error and, Your Honor, I got to thinking about this later. I didn't argue this yesterday, but I am going to argue it now that who's to say what's the secondary system? We've been calling the axle the secondary system, but there are two systems here that have to fail before there can be an accident and have they have not proved that the first system failed. All they've proved is that maybe something happened, but if it's only, if there was not a failure and it had to be operator error and even his own expert says the most likely person to have set this up was Mr. Hogan, then it falls on him. They have to prove, we believe, that Mr. Hogan, that Corder and Sons were the ones that were responsible, we believe for both failures in order for this to happen. Because it never would have happened except for the failure of whatever happened happened with the machine. If it never would have happened, then we believe that the only reasonable conclusion under all the evidence is that that's on Mr. Hogan and that the Corders shouldn't be responsible for

that.

There's also been testimony which we believe would show that the system used as directed was adequate. I mean, you can make anything fail and I think that our expert indicated that the machine's strong enough that if you tilt those things, it's not, no longer flat on it and it'd be kicking out from under it and that that could -- would be the explanation for this, but you'd expect for that to happen pretty quick.

The bottom line is that we think that we have clearly shown, there's plenty of evidence, that he, in fact, did make the error that started this chain of events that resulted in whatever happened out there. As Mr. Bunce had indicated yesterday, if there's circumstantial evidence with his expert saying the most likely person to have set this -- this machine up in the position that it was in at the time that whatever happened happened, was Mr. Hogan.

If the ladies that he called as his witnesses, one of Ms. Natasha Smith, testified that they were inside talking with Mr. Corder when they heard a machine running. I mean the only reasonable conclusion from this, it would take speculation and everything else, surmise, speculation, and conjecture if I can use that terminology that anybody other than Mr. Hogan started this ball rolling.

So we certainly think -- first of all we think you

ought to go ahead and dismiss the case at this point in time, but if you see fit not to, certainly we're entitled to the -- to the charge on comparative negligence. He doesn't get a free ride because he messed up so bad with this machine that -- that the secondary system, which was in place, wasn't enough to save him. Because as it's been testified, this stuff might be good and it might work good, but the machine is strong enough if you do something wrong, you can make it fail. The same with the other stuff. He made it fail and Corder and Sons shouldn't bear the responsibility of that.

THE COURT: Thank you.

MR. BUNCE: Getting the ball rolling, Your Honor, the duty and the negligent act here is not starting the ball rolling. The negligent act of employees in here is the statutory duty to have a backstop. All right. And that is it. The duty we're getting to here, the duty that, is that and it's from Regulation, it's a request to charge here -- but the regulation states, An employer owes a duty to maintain a place of employment which is free of recognized hazards which may cause death or serious harm to his employees.

So the duty is to have a safe place to work. Mr. Fournier gave testimony that working under a suspended load without adequate secondary supports was a recognized hazard

of this type. All right. So there's the duty is to have that secondary system in place when you have people working underneath it. All right. And the adequate requires two supports. And so here, the break, that's the duty; the breach is to have Mr. Hogan working under it with only one support. So we've got a duty and a breach and from that point, there is no break in that chain from there, the proximate cause here, right.

It doesn't matter what caused it move because the duty was to have a -- provide a backup in essence here. This is -- you know, we talked about the picture case. This is different from the picture case because there's no duty there in those sorts of cases. This is more analogous to -- to safety guards on machines. The duty is to have it there just for the very simple purpose that things can inadvertently happen. And so -- if the -- the -- the, in those instances, it's not what caused it go in that's important; it's whether or not there's an adequate safeguard there to prevent injury.

The same way with automobile cases and defective design cases there, Your Honor, and the -- if the craft worthiness -- if the duty is to have a safe interior and you don't have a knob on the gearshift or you have the corner of the ashtray that's sharp, it doesn't matter what caused the wreck. That's not important. The issue is the

safety that was intended to protect for had that in place. And this is intended to protect in just the same sort of situation. It's foreseen, it's in the standards. The standards say that that's the -- that safety is the reason for this and so it's a matter of where you place the duty and where you do that -- and so here, the duty is to have this adequate system in place.

There's a breach of it and so we've got, we don't have a res ipsa problem. Proximate cause, there's nothing here that causes a problem in the chain of events that's in place because the proximate cause issue or maybe a res ipsa problem would be if there was an adequate system and then you couldn't explain why it still failed. But here we don't have any of that. There was an adequate system in the first place.

It may not seem highly logical that we could be in this situation where it wouldn't be comparative, but, Your Honor, we don't rely on showing the -- the other act caused the tipping or caused it to move; that's irrelevant here because this was supposed to be a safeguard.

MR. HENDRIX: And a safeguard was there. They've got their hired gun, their expert, who wants to say that it was inadequate, but even he doesn't doubt that it was there. They had a safeguard. As our expert, Mr. Reeves, testified, you can make that fail. And I believe he

testified that even if you had one of the posts under each one as suggested by Mr. Fournier, that the machine was strong enough, if you tilt it down with all the power of the machine, they would fail. You can make reasonable safeguards fail. There was a reasonable safeguard, our position is, in place. The fact that Mr. Fournier doesn't like it and comes in to say that it should be this and it should be that doesn't mean that what was there under the circumstances wasn't reasonable.

I mean I think you have one standard for NASA and another standard for, for salvage yards. I mean you don't have the level of technology. You don't have the level of ability to pay at a salvage yard that you would something a U.S. Military or -- or NASA or things of that description. There's got to be varying degrees. I believe all of this has to be what is reasonable under the circumstances and we submit to Your Honor, that it would be that what they had was reasonable under the circumstances if applied properly by the person using it, which it was not because we believe that the preponderance of the credible evidence is that Mr. -- Mr. Hogan, who claimed never to have operated the machine, operated the machine and set this up by himself, which I think it's fair to assume from the testimony of Mr. Bubba Corder, if I may call him that, Mr. Robert Corder, that Mr. Hogan had never done that when Mr. Robert Corder

was there with him. He'd never set it up a one-person operation.

He had to have the other person out there. We think the evidence is clear that Mr. -- for whatever reason, that Mr. Hogan did it on his own violating the policy and the instructions of his employers and caused this accident.

MR. BUNCE: I will be very brief, Your Honor. Of course, he's getting to the weight of the evidence because there was opposing testimony. The only -- in fact, the only testimony about the adequacy of the system in place was that it was inadequate and this is beyond the outside of the province of the jury to determine if this was adequate or not. The adequacy -- if Mr. Fournier's testimony was not that there had to be some sort of safeguard in place or that there had to be some sort of temporary supports in place; that it has to be adequate temporary supports.

MR. HENDRIX: Your Honor, I don't believe that there's anything in the law that says that, that you have to accept what an expert says or any jury or judge has to accept what an expert says that's the gospel, that's the end of it. So I think he's wrong in that regard. The fact that Mr. Fournier, in his opinion, thought that the system they had was inadequate, it is not the bottom line on the

deal; that's not the last word on it.

THE COURT: The issue in front me right now is the plaintiff's motion for directed verdict on the defense for comparative negligence. There is evidence in the record of credibility which is entirely up to the jury that would place Mr. Hogan in control of the forklift prior to the accident. When an instrumentality that causes injury should have been management of the party and the accident is such as in the ordinary course of things doesn't happen and those who have the management use proper care that provides reasonable evidence in the absence of an explanation by that party, that the action arose from a want of care and that's from Childers v. Gaslines, Inc 248 S.C. 316, 1966, which relied on a 1958 case called Shephard v. United States Fidelity and Guaranty Company, which as y'all may remember was a parked car that had been left in the same state as it had been when the owner parked it. It rolled out of a driveway into the street and caused a wreck with the plaintiff's car and the Court held that the defendant's negligence could be sent to the jury because unexpected presence on the highway of a runaway automobile without a driver or occupant raised a prima facie inference of negligence on the part of the owner.

Being of itself sufficient to take the case from the jury and sufficient to warrant the jury to prove he was

negligent. So this is all from a discussion by -- Felix and on our State's "flexible approach to inferences" in the context of circumstantial evidence. And why we don't recognize res ipsa loquitur.

Now that means I deny your motion, but I appreciate y'all's fine arguments.

All right. Anything else.

MR. HENDRIX: Yes, sir, Your Honor. We just renew our motion and I won't argue it again unless you want to hear more. I think -- I'd ask you to just remember all that and we would seriously ask you to dismiss the case. We believe that they've got -- the burdens on them that they can't explain and -- like I'm saying, honestly, I don't think that there's anything that shows that there's a definite violation of any statute here. So I mean, I don't think that they're, I think it's just looking at who caused the accident and they have not shown that there was any failure or negligence on the part of Corder and Sons that started the events and I think it's admitted that if the -- if there was not a failure of the machine, it's more than capable of holding this SUV indefinitely it'll be there when you come back especially with the prop under there; that the only thing that could have caused the failure since there was absolutely no evidence of a machine failure or a hydraulics failure, no evidence whatever, is that Mr.

Hogan caused this to happen and that being the case, we submit it shouldn't be sent to the jury and to do otherwise, we do think there's sort of a res ipsa case here is that you've got two things; either one will -- will -- will prevent this accident from happening and they don't have any evidence that the first step of what caused it to slip.

We think to that extent, it's like the picture case in that my understanding that there was essentially no evidence of what made it fall. Well, there's no evidence that the Corders had any responsibility for the start of this, for whatever made the forks tilt, none and there is evidence that Mr. Hogan most probably had something to do with that. Without proof of what started it, we think that the res ipsa thing does click in and the same theory as stated in the I believe it was Orr v. Greenville County Hospital Systems that those elements would apply and we'd ask you to dismiss.

THE COURT: Well, I understand your argument, Mr. Hendrix. I think the difference is Mr. Bunce is focusing his negligence claim on that second tier of safety. In other words he's saying it doesn't matter what caused the first failure, he doesn't have to prove that and just has to prove that there was negligence in the backup system because obviously Corder and Sons believed it was

foreseeable that there would be a failure of the lift, it had to be stopped in order to create a safe working place and Mr. Bunce's argument on behalf of his client, Mr. Hogan, is that the system was unreasonable and the proximate cause of Mr. Hogan's injuries and he's got the expert testimony, Mr. Fournier, to back that up if the jury believes it. So while I understand your argument, I adhere to my earlier ruling.

The picture case, at least the Order of the Court of Appeals unlike the Order of the Trial Court, did not discuss Cheney v. Burgess, Hubert and Felix or the Shephard v. USF&G cases. All right. Thank you.

MR. HENDRIX: Thank you, Your Honor.

THE COURT: Anything further?

MR. HENDRIX: Nothing further.

JURY CHARGE CONFERENCE

MR. BUNCE: I -- I gather you will tell us what the charges are here, Your Honor.

MR. HENDRIX: Your Honor, we had handed up some requests to charge for you to consider. I think ultimately, of course, I always feel like that's up to you, but --

THE COURT: Yes, sir, I've got your requests to charge. I think I cover all of them except I -- I don't know if y'all want to be heard on concurring cause, but

can't leave it to conjecture. They can't tell you what he did wrong. They don't know. They can't point to anything, they just think it must be wrong because something bad happened. That's not enough, ladies and gentlemen, to find Mr. Hogan negligent. Certainly not enough to find him negligent using their procedures. All right. That's why I told you I was going to come back here and say you shouldn't find that he's negligent because they haven't shown you anything he did wrong; just maybe, maybe, maybe, could have been, could have been, could have been. All right.

I've made our point very clear that from Mr. Hogan's perspective, it doesn't matter where you start or what happened, what started it coming down, it's the lack of it that's the breach for Corder and Sons. They have a different duty because the employer provides the tools. He can't bring in his own tools and his own procedures. He has to go with what they have, what they provide and that's why the duties are different. The responsibilities are different here -- or at this point, you know, you can blame the least of our society, he who has the least choices at their disposal or find somebody else.

Thank you.

JURY CHARGE

THE COURT: All right. Thank you. Ladies and

gentlemen, now you've heard from the lawyers and you've heard all the evidence in the case. It's my duty to instruct you on the law that applies to this case and it's your duty to find the facts from the evidence. To those facts, you must apply the law as I give it to you and you must follow the law as I give it to you. You should not be concerned with what the law should be, but what it is and you should not be influenced by any personal likes or dislikes, opinions or prejudices or undue sympathy and that means you must decide this case solely on the evidence before you and according to the law. And you recall you took an oath to do just that when we began the trial on Monday.

Now in following my instructions, you must follow them all and not single out some and ignore others because they're all equally important and you should not read into these instructions or into anything I have said or done during this trial as any indication as to what I think the fact are or what your verdict should be because that is a matter -- a matter entirely for you to decide because our system of justice and our constitution, you and you alone are the judges of the facts.

You decide what the facts are by evaluating and weighing the evidence you've heard during this trial and there's no way for you to weigh the evidence in a literal

since. I'm not going give you a set of scales to take back there and conduct experiments of course. It's entirely a mental process and you simple weigh and evaluate the evidence by using your good common sense, your life experiences and your sense of reason and judgment and you bring those things to bear on the evidence that you've heard.

I told you at the outset that a party who seeks a verdict from you has the burden of proof and that burden is in a civil case called the greater weight of the evidence and that means the party must produce evidence which considered in light of all the facts, leads you to believe that what you're trying to show is more likely true than not true. If you were to put each sides evidence on opposite sides of the scales, the party who is seeking to prevail on a claim would have to make the scales tip slightly on his side in order to prevail.

If the party fails to do that, then the verdict must be for the other party. So what you have to do is mentally weigh the evidence and mentally place it on the scales and see which sides evidence has the greater weight in your mind. If after you do that, the scales are evenly balanced and there's not a greater weight on either side, then the parties failed to meet their burden of proof on that claim and you must decide for the other party. So you

may be familiar with the burden of proof in criminal cases, which is proof beyond a reasonable doubt and I've already told you that that is a higher standard that does not apply in this case, which is a civil matter.

Now I told you that you have to decide the facts and you must decide the facts from the evidence and you'll recall I told you Monday that evidence consists of two things; sworn witness testimony and exhibits, nothing else is evidence, so don't take anything else into account. The arguments of the lawyers don't constitute evidence and if you remember the testimony or evidence different from the way they remember it; your memory controls. Anything you may have seen or heard when court is not in session is not evidence.

Now, there are also two different types of evidence and what I'm talking about now is circumstantial and direct evidence. You've probably heard those terms before and I want to go over those terms with you briefly. Direct evidence is direct proof of a fact, such as the testimony of an eyewitness. It is evidence that if believed, immediately establishes a fact.

Circumstantial evidence is indirect evidence, that is proof of a chain of facts from which you could find another fact exists even though it has not been proven directly. A party may prove their case by circumstantial

evidence, direct evidence or some combination. The law makes no distinction between the weight or value to be given either direct or circumstantial evidence. You're entitled to consider both and the State -- a party may use either.

Now, as a judge of the facts, I told you that you would have to, by necessity, determine the credibility of all the evidence. So that means for every witness who testified and every exhibit that's been admitted, you have to gauge its believability. You can use numerous tools to do that. In the case of a witness who testifies, you can consider, if you choose to, their ability that they had to see, hear, or know the things about which they testified. You can consider how well they were able to recall and describe those things. You can consider their demeanor. You can consider how their testimony stacks up against the other evidence in the case; was it consistent or inconsistent. You may consider if the witness had some interest in the outcome of the case; whether they were biased or prejudice towards someone or something in the case.

You may consider anything you use in your day-to-day life when you decide whether someone is worthy of belief because you certainly didn't check your common sense at the door of the Lexington County Courthouse.

Now, you may believe as much or as little of each witness's testimony as you think proper. You can believe everything a witness says; you can believe nothing a witness says. You can believe parts of their testimony and disbelieve other parts. You can believe one witness over several or several over one, but you certainly don't determine this matter of credibility simply by counting up the witnesses on either side because your sole job is to determine the truth in this case when it comes to determining the facts. And it doesn't matter to you whether that truth comes from a witness for the plaintiff or for the defendant.

You've heard testimony from expert witnesses and I instructed you how someone is qualified as an expert testimony, but you can judge expert testimony just like any other testimony. That is you can accept it or reject it or give it whatever weight you think it deserves.

You also heard deposition testimony. I told you that's to be treated the same as, as live testimony and again, you're the judge of the credibility of that testimony as well.

And I'm now going to move on to the actual law that applies to the claims in this case.

I also told you Monday that the defendant, Corder and Sons, Incorporated, is a corporation and no distinction

is made by the law between corporations and individuals. A corporation is a person in the eyes of the law because they can only act through people, their agents and employees and they're responsible for any negligent acts or omissions of their officers or employees while they are acting within the scope of their authority or employment, which proximately causes injury to another person.

Now in this case, Mr. Hogan is claiming that Corder and Sons, Incorporated was negligent and their negligence proximately caused his injuries and that he should be awarded damages. To prevail on this claim and to prove it, Mr. Hogan must prove by the greater weight of the evidence three things. First, he must prove that Corder and Sons, Incorporated breached a duty of care owed to him by a negligent act or omission; second, he must prove that he suffered damages as a result of that breach of duty by Corder and Sons, Incorporated; and third and finally, he must prove that damages were approximately caused by Corder and Sons breach of duty.

When a plaintiff has the burden of proving negligence by the greater weight of the evidence, it is important that you understand what the term negligence means. In law, negligence is the breach of a duty of care owed to a plaintiff by the defendant. Negligence is defined as the absence of due or ordinary care. The lack

of due care is the failure to do something that a person of ordinary care and prudence would have done under the circumstances existing at the time. Carelessness is another word for negligence. If you have trouble with the word negligence because it's a legal term, you can substitute careless as it means the same thing. It is either the failing to do something that an ordinary and reasonable person would have done under the same circumstances or is doing something that an ordinary and reasonable person would not have done under the same circumstances.

Now a plaintiff's burden of proof in a negligence case cannot be met by relying on the theory that the very fact of injury or the claim of injury by itself means that someone was negligent. The burden of proof is on the plaintiff to establish that negligent conduct by the greater weight of the evidence.

Now you've heard the term proximate cause and that is something that the plaintiff must prove by the greater weight of the evidence that his damages were proximately caused by the defendant's negligence. The law defines proximate cause as something that produces a natural chain of events that in the end brings about the injury. It is the direct cause of the injury. To prove that a defendant's negligence proximately caused the plaintiff's

injury, the plaintiff must first prove causation and fact and that's proven by showing the injury would not have occurred but for the defendant's negligence. A plaintiff must also prove something called legal cause and that is shown by proving that the injury was foreseeable. This means the injury occurs by a natural and probable consequence of the defendant's negligence. A plaintiff must prove that some injury from the defendant's negligence was foreseeable, but he does not have to prove that the specific and particular injury that occurred was foreseeable. As I've said, the defendant may be held liable for anything that appears to have been a natural and probable consequence of his negligence. However, a defendant cannot be held responsible for things that could not be reasonably expected to happen.

Where the cause of a plaintiff's injury can reasonably be attributed to an act for which the defendant is not responsible as to an act for which he is responsible, then the plaintiff has failed to carry his burden of establishing that his injuries were the proximate result of the defendant's negligence. However, proximate cause does not mean the sole or only cause. A defendant's act can be a proximate cause of plaintiff's injury if it was at least one of the direct concurring causes of the injury.

Now in this case, Mr. Hogan claims that the defendant failed to follow a provision of our State Code of Regulations which in this case comes under Regulation 71-112 and states in part, That employers shall maintain a place of employment which is free of recognized hazards which may cause death or serious physical harm to his employees.

So the plaintiff claims that the defendant failed to follow the rule set by the statute. The failure to follow a statutory rule can be -- is negligence as a matter of law. If you find the defendant failed to follow a statutory rule, negligence has been proven and the next thing you would decide is whether the defendant's negligence proximately caused the plaintiff's injuries. The violation of a statute does not in itself constitute recklessness, willfulness, and wantonance -- wantonness, excuse me. However, it may be considered as evidence in deciding whether the defendant was reckless, willful and wanton.

It is the duty of a company to provide a reasonably safe place for work for its employees. The law imposes the duty upon all companies to provide its employees with reasonably safe and suitable equipment and a party who goes to work for a company has a right to assume the company has a reasonably safe and suitable appliances to do the work.

Now if you decide the plaintiff is entitled to a verdict, your next step would be to decide how much money the defendant should be required to pay. When one is injured by the negligence of another and that injury was proximately caused by the negligence, the injured person is entitled to be fully compensated for all injuries directly or proximately resulting from any negligent act or omission by the defendant.

The purpose of actual damages is to compensate the plaintiff for his injuries or loss and to put him as far as possible, in the same position he was in before the injuries occurred. So actual damages would be the actual losses and expenses the plaintiff has suffered because of the defendant's negligence.

For a plaintiff who has been physically injured, these damages can include pain and suffering, both past and future, as well as mental anguish, impairment of health or physical condition and disfigurement.

The plaintiff may also claim loss of wages due to absence from work and reduced earning ability for the future.

In determining the amount of compensation for personal injuries, it's proper to consider past and present aspects of the injury. This would include physical and mental pain and suffering, expenses incurred for necessary

medical treatment, loss of earning ability, loss of enjoyment of life and any other losses that are reflected by the character of the injury. An injured party may recover for those future damages that are reasonably sure to result.

The principle underlying the recovery for future damages is that the party can only bring one action for his injuries and, therefore, it is proper that he can claim and recover future damages if he has demonstrated they will, with reasonable certainty, result. A party, however, is never entitled to recover damages that are speculative in nature, but if you find the party is entitled to a verdict for damages, your verdict should include an amount to cover any past, present, and future damages, which were proximately caused by the defendant and any future damages must be reasonably certain to occur in the future as a result of the defendant's negligence.

Now in a personal injury action, the general rule is the plaintiff may recover for the necessary and reasonable expenses caused by the injury such as medical expenses. The recovery for medical expenses is controlled by what the services rendered were reasonably worth and not by what was actually paid or contracted to be paid. The plaintiff must prove that the expenses caused by the injury were necessary and reasonable. If you determine that the

plaintiff is entitled to recover damages, including medical, hospital, or other healthcare costs, the plaintiff can only recover such sums as you deem to be both reasonable and necessary.

While the amount actually charged and incurred may be considered by you, you're not bound by that amount. You must find only such sum as is reasonable and necessary. To recover for future medical expenses, the plaintiff must prove such expenses as are reasonably certain to result in the future.

Now pain and suffering is the recognized aspect of damages in personal injury cases and pain and suffering compensates a party for physical discomfort and emotional response to the sensation of pain caused by the injury itself. Mental suffering, apprehension, shock, fear, anxiety, emotional upset, humiliation, either present or expected in the future, can be proper elements of damages. Mental suffering covers not only the pain associated with the injury, but also the mental reaction to that pain and to the possible consequences of the injury.

Loss of the capacity to enjoy life resulting from personal injury is a proper element of damages. Damages for loss of enjoyment of life compensate for limitations resulting from the defendant's negligence on the injured person's ability to participate in and derive pleasure from

the normal activities of daily life or for the individuals inability to pursue his talents, recreational interests, hobbies or avocations.

These elements of damages, pain and suffering, mental anguish, loss of enjoyment of life, have no market place. There's no way you can go buy these items, of course, so they're not capable of exact measurement. So, you, the jury, will have to determine what amount you feel is fair and reasonable based on your view of the evidence.

Now the loss of earning capacity or the impairment of such capacity that has resulted from injuries to the plaintiff is also a proper element of damages.

In determining the amount of damages due to a plaintiff for loss or impairment of earnings, you should consider the loss of future earning power, the affect the impairment will have on his capacity to work, the extent the impairment will impair his earning capacity, the present value of all losses due to his impaired learning power and the physical pain and suffering as reasonably certain will result in the future from his injuries.

The evidence of what the plaintiff had previously earned when employed in the past is a factor you may consider. You may also award him damages for the loss or decrease of earning capacity during his entire life expectancy. In the determining the loss of earning

capacity that may result in the future, the fact that the plaintiff was making the same or more since the injury, there's only one factor to consider.

Now, ladies and gentlemen, if you determine the plaintiff is entitled to damages for impairment of earning capacity, you must decide the amount of damages using the life expectancy table as a guide. This is simply a table our legislature has -- has set up that estimates the probable remaining length of life of all people in our state at a given age. Mr. Hogan's life expectancy according to his table is 28.28 years as he is a 51 year old male. This may be considered by you along with any other facts and circumstances that bear on his life expectancy including his occupation, habits and health in deciding the amount of damages to be awarded.

Now the defendant claims the plaintiff had pre-existing injuries or conditions before the date of this incident that -- and if you find the plaintiff received the injury as a result of the defendant's negligence and is entitled to recover damages for that injury, the fact that he had a pre-existing injury or condition would not prevent Mr. Hogan from recovering, but the defendant is responsible for all ill effects which considering the plaintiff's condition of health when the plaintiff was injured naturally and necessarily followed the injury. The

defendant takes the plaintiff as the plaintiff is found, whether the plaintiff is in perfect health, poor health or somewhere in between.

A defendant's liability is in no way lessened or affected because of the fact that the injury would not have resulted or would not have been as serious or severe had the plaintiff been in good health or that the injuries were aggravated and rendered more difficult to cure by reason of the fact that the plaintiff was not in good health. If the presence of a pre-existing injury or condition aggravates and prolongs the injury and increases the damages, the plaintiff should be compensated for the increase or added damages. A person with a pre-existing injury or condition is not however entitled to any compensation for the pre-existing injury or condition itself. In addition, if the problems are the result of a natural progression or the worsening of pre-existing injury or condition, then the plaintiff would not be not entitled to be compensated for those problems.

Now someone who has suffered damages from the negligence of another is under a duty to make all reasonable efforts to minimize the damages incurred to the extent a plaintiff reasonably could have so minimized his damages and failed to do so, he is not entitled to recover from the other party. In other words, one cannot recover

any damage that might have been avoided by the use of reasonable care and diligence.

The efforts required of a plaintiff to minimize his damages must be determined by common sense and the rule of fair dealing and what a person of ordinary and reason and prudence would have done under the same circumstances. The plaintiff is not required to use unreasonable efforts or go to great expense to avoid and lessen the damages. The defendant bears the burden of failure to lessen damages on the part of the plaintiff by the greater weight of the evidence.

If you find the plaintiff failed to mitigate his damages, the plaintiff may recover damages for the injuries themselves, but not damages for the aggravation of the injuries that could have been reasonably avoided.

Now the plaintiff bears the burden of proving by the greater weight of the evidence that he's entitled to damages. The existence, causation, or amount of damages cannot be left to speculation or guesswork. However, proof of the amount of loss with absolute or mathematical certainty is not required. Damages must be proved to a reasonable degree of certainty and the evidence presented by the plaintiff must enable you to determine what amount is fair, just, and reasonable.

Now the last thing I need to go over with you about

the law is the claim of the defendant that Mr. Hogan was also negligent and this law is known as comparative negligence. So what we have is Corder and Sons, Incorporated are not only denying negligence for wrongdoing, but any responsibility for the damages claimed by Mr. Hogan, but they also claim that Mr. Hogan was at fault.

So they're saying in essence, that even if the jury finds that we were at fault, it required the fault of each of us for the damages to have occurred and this is something they're saying in the alternative. So what we have then is a case where both sides claim the other is responsible for the damages and the accident. So this law known as comparative negligence, means that depending on your view of the evidence, you may find both parties to be negligent and both parties liable in some proportion. Under this law, you, as the jury, must compare the negligence or fault of the defendant, if any, with the negligence or fault of the plaintiff, if any. So how do you make this comparison? You do it in a very simple way by using percentages based on a 100 percent total. If you believe both parties were at fault and each party's fault was the proximate cause of any injuries or damages that Mr. Hogan suffered, you then decide or compare the party's fault.

By way of example, you may decide that one party was 30 percent at fault and the other 70 percent. You may decide one party was 90 percent at fault; the other 10 percent or you may decide they were 50 percent at fault. You may decide that one was a 100 percent and the other 0 percent. So what you're doing then is considering the conduct of the parties as a whole and measuring each side's contribution to the loss using percentages. In determining whether the plaintiff was comparatively negligent, the defendant bears the burden of proof. That is the defendant, Corder and Sons Incorporated, must prove by the greater weight of the evidence that Mr. Hogan was negligent and that his negligence was the proximate cause of his own damages. Please remember the plaintiff's negligence, if any, must have contributed proximately to the injury. If you find the plaintiff was negligent, but his own negligence was remote and did not proximately cause his injury, then the law of comparative negligence does not apply.

Likewise, you're only to consider the conduct of the party's in allocating percentages. You may not consider the action of others who are not parties to the case. Of course, you may decide that the plaintiff was not at fault at all and remember I'm not suggesting that comparative negligence does or does not apply in this case

or if it does apply the proper amount of liability to be apportioned between the parties. Whatever you decide, please remember the percentage must equal 100 percent and that is for you and you alone to decide as finders of the facts. I'm merely providing you with the percentages by way of example.

Now to put this in context, and because based on my experience, it's sometimes difficult to communicate, I'm going to ask you to give each juror one of those, please, sir. This is the verdict form. I'm going to go over it with you so you can kind of understand how comparative negligence works if you decide it applies.

(The bailiff passed out copies of the verdict form.)

THE COURT: Everybody got one? Okay. So let's just go through this under several different scenarios and again, I'm not suggesting of course which scenario you should use; that's entirely up to you, but these are just suggestions in a sense of how the verdict form works.

The first question: Was the defendant negligent? If you answer that question no; that's the end of your deliberations. Okay. If you answer it yes, however, you go to question 2.

Two: Was the defendant's negligence the proximate cause of the plaintiff's injuries? If you answer that no,

again, you -- you're through with your deliberations because the plaintiff would not have carried his burden of proof on proximate cause. But if you answered that question yes and find the plaintiff has carried his burden of proof, then you go to question 3 and this is where you determine whether Mr. Hogan was negligent.

If you say yes, he was negligent as well, you go to question 4 and see if the defendant also proved that Mr. Hogan's negligence proximately caused his own injuries. If you answered that yes as well; you go to question 5 and that's where you compare the negligence and use the percentages. So if you answered for example, one party 10 percent; the other party 90 percent, they have to total up to a 100, then you'd go to question 6. And if the plaintiff's negligence was greater than 50 percent, again, you would stop your deliberations. But if it was not, you'd go to question 7 where you state the amount of damages.

Now, it's very important if you use comparative negligence and find that it applies, that you not discount the damages by your percentages. We're not going make you do any kind of math. Okay. So you have to find the total amount of damages and then we'll reduce it based on your percentages at a later time. So that's one scenario. You could also find that comparative negligence doesn't apply

at all and then for instance you could find that when you answered question Number 1 is yes and you go to question 2 and answer that yes, that the negligence was the proximate cause of Mr. Hogan's injuries and then when you get to question 3, you could say no, Mr. Hogan was not negligent whatsoever.

You would go to question 7 where again you determine his damages. Likewise, you could get to question 7 without having to go through questions 5 or 6 if you found that Mr. Hogan was negligent but his negligence was not the proximate cause of his injuries.

So that's how that works and you see that there is a blank on the verdict form for punitive damages.

I will tell you that punitive damages can be considered by you if you award actual damages. Punitive damages are intended to punish a defendant for extraordinary and outrageous misconduct and to deter defendant and others from committing similar acts in the future. Punitive damages can only be awarded when the defendant's conduct has amounted to more than mere negligence. The evidence must establish that the defendant's actions were reckless, willful, and wanton, meaning there was a conscious failure to exercise due care or a conscious indifference to or reckless disregard of the rights and safety of others.

Recklessness means a conscious failure to use reasonable care and a person who is negligent acts carelessly. A person who acts recklessly, willfully, and wantonly is not only careless, but is aware that he's being careless. If you find the defendant's conduct was willful, wanton, or reckless, you may award punitive damages.

To support such an award, the plaintiff must prove by clear and convincing evidence that the conduct included a consciousness or of wrongdoing when it occurred. Clear and convincing proof leaves no substantial doubt in your mind. It means the evidence is not ambiguous, doubtful, equivocal or contrary.

Convincing means persuading by proof of argument, causing one to believe in the truth of what is asserted. Clear and convincing proof establishes not only that a fact is probable, but it is highly probable.

Now, before awarding punitive damages, you must consider and weigh four elements that may be pertinent to the facts. First, the degree of reprehensibility of the defendant's conduct. You should consider whether the harm caused was physical as opposed to economic, whether the conduct demonstrated an indifference to or a reckless disregard for the health or safety of others, the target of the conduct, whether the target of the conduct had financial vulnerability, whether the conduct involved

repeated actions or was an isolated incident; whether the harm was the result of intentional malice, trickery or deceit rather than a mere accident; and the likelihood the accident would deter the defendant or others from like conduct.

Any punitive damage award should bear a reasonable relationship to the nature and extent of the conduct and harm caused including the actual damages you have awarded. Second, the punitive damage award must take into account as a mitigating factor any other award or penalty that may be imposed for the conduct involved.

Third, the award of punitive damages must be rendered a punishment and the defendant's ability to pay should be considered and economic bankruptcy, however, is not an absolute bar to an award of punitive damages.

Fourth and finally, punitive damages can only be awarded for injuries the defendant caused to the parties in this action. Potential harm to others is not something you can lump into your award. It may be appropriate to consider the reasonableness of a punitive damages award and the potential harm of the defendant's conduct could have caused, but that potential harm is the harm potentially caused to the plaintiff. So that's the law about punitive damages.

So you don't serve as jurors, ladies and gentlemen,

to be partisans and advocates for either side. You were chosen because both sides believed you could fair and impartial and you are judges, judges of the facts, and your sole interest is to determine what the facts are, take the law I just gave you and apply it to those facts and ultimately reach a verdict.

Now I'm not going to hold you up any more except to tell you that the record's closed. You'll get the exhibits back there in just a minute. That will be your signal you can start deliberating. But they're not going to be any more exhibits other than what you get back there. You'll have to rely on your memory of the testimony. There's not going to be any more witnesses. So I know you'll deliberate conscientiously and courteously and thank you for your attention to me.

Don't start talking about the case until you get the exhibits because I have to take -- believe it or not, for as long as I've been talking -- I might have left something out and they'll be sure to tell me if I did.

So thank you very much for your patience and if you'll give me that; you keep that and everybody else give your verdict forms. Just leave them one back there. Thank you.

(The jury left the courtroom at 4:47 p.m.)

THE COURT: Thank you. All right. Any objection

or exception to the charge?

MR. BUNCE: Nothing further, Your Honor.

MR. HENDRIX: Your Honor, the only problem I had with the charge is when you charged the comparative negligence there was a point where you said that you might not, and of course this is not a quote, you might not find that the plaintiff was negligent at all. I wanted you to say also and at the same time, you might not find that the defendant was negligent at all and that was not included and I kind of wish -- would ask you to make sure that that's -- cuts both ways. I can't remember the exact words --

THE COURT: Okay.

MR. HENDRIX: -- but it was something like that.

THE COURT: Yes, sir. Let me see here. I certainly didn't mean to emphasize that. I thought the charge as a whole, if I read it like I have it typed out here, I said if the defendant denies any wrongdoing, any negligence or wrongdoing of any kind and denies any legal responsibility for the damages, but he also, the defendant also claims the plaintiff was at fault.

MR. HENDRIX: Yes, sir, you read all that.

THE COURT: Is an alternative.

MR. HENDRIX: Yes, sir.

THE COURT: So --

THE COURT: Thank you for making that suggestion. I think it's an improvement to my comparative negligence charge. Any other objections to the charge?

MR. HENDRIX: No, Your Honor.

MR. BUNCE: None from the Plaintiff, Your Honor.

(The attorneys were going through the exhibits.)

(The Court released the alternate juror.)

THE COURT REPORTER: We're ready.

(The jury began deliberations at 5 o'clock p.m.)

(The jury sent a note out to the Court.)

JURY QUESTION

THE COURT: We got a note from the jury. It says we need a calculator.

THE CLERK: I've got one.

(A calculator was sent in to the jury.)

THE COURT REPORTER: You want me to mark that as an exhibit?

THE COURT: Yes, ma'am.

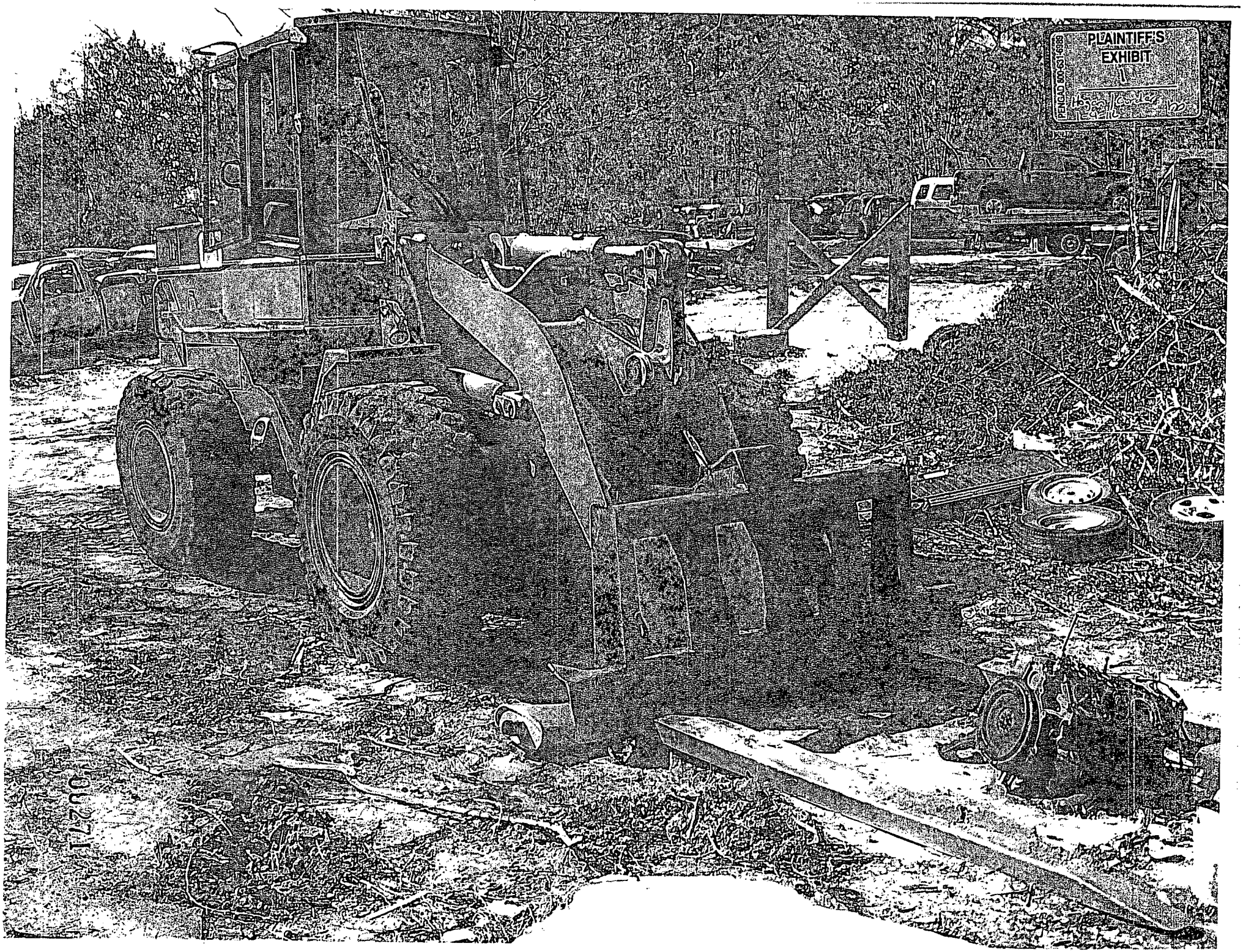
(Court's Exhibit Number 10 was marked for the record.)

(It was reported to the Court that a verdict was reached at 6:14 p.m.)

(The jury entered the courtroom at 6:37 p.m.)

VERDICT

THE COURT: Okay. Mr. Powell, has the jury reached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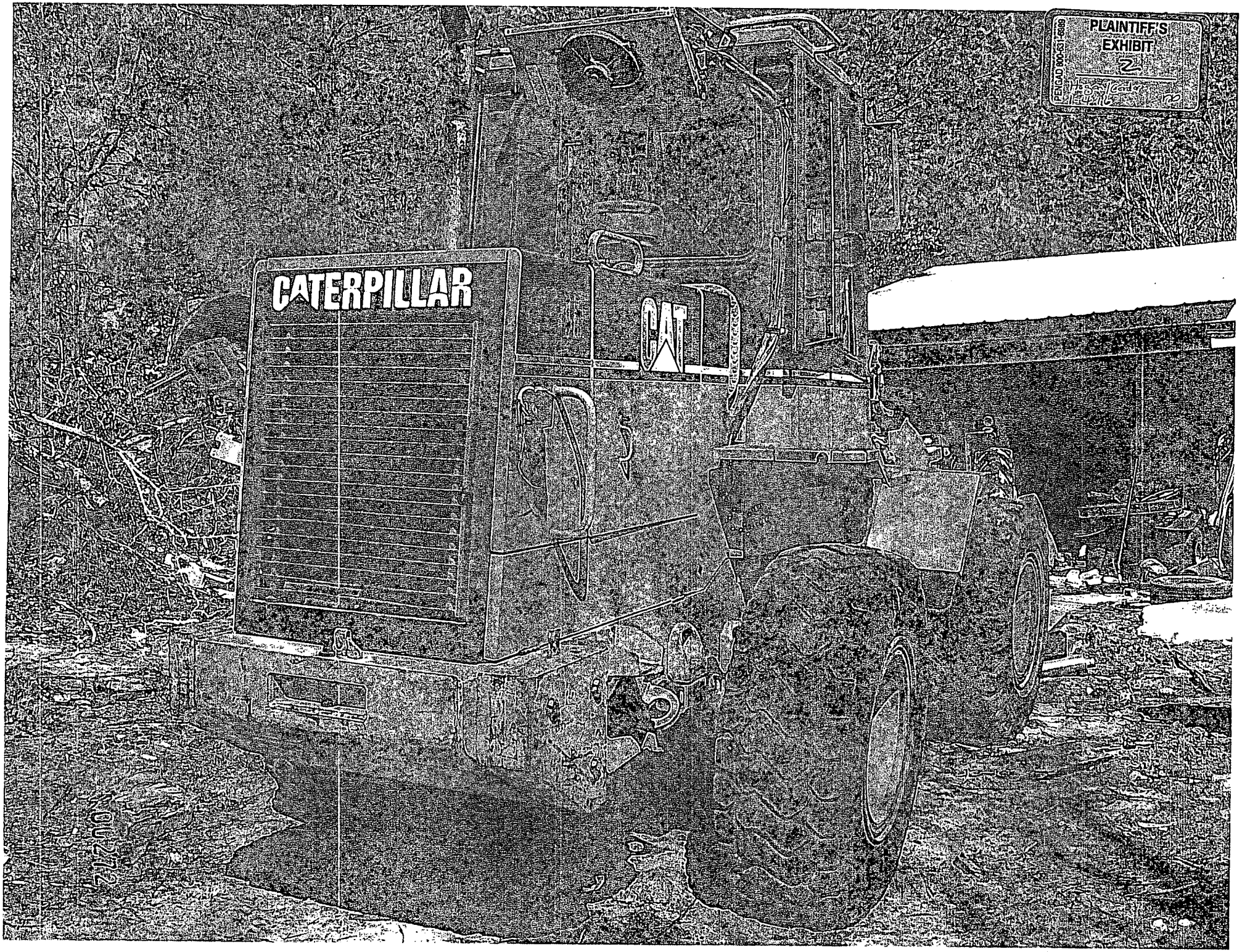
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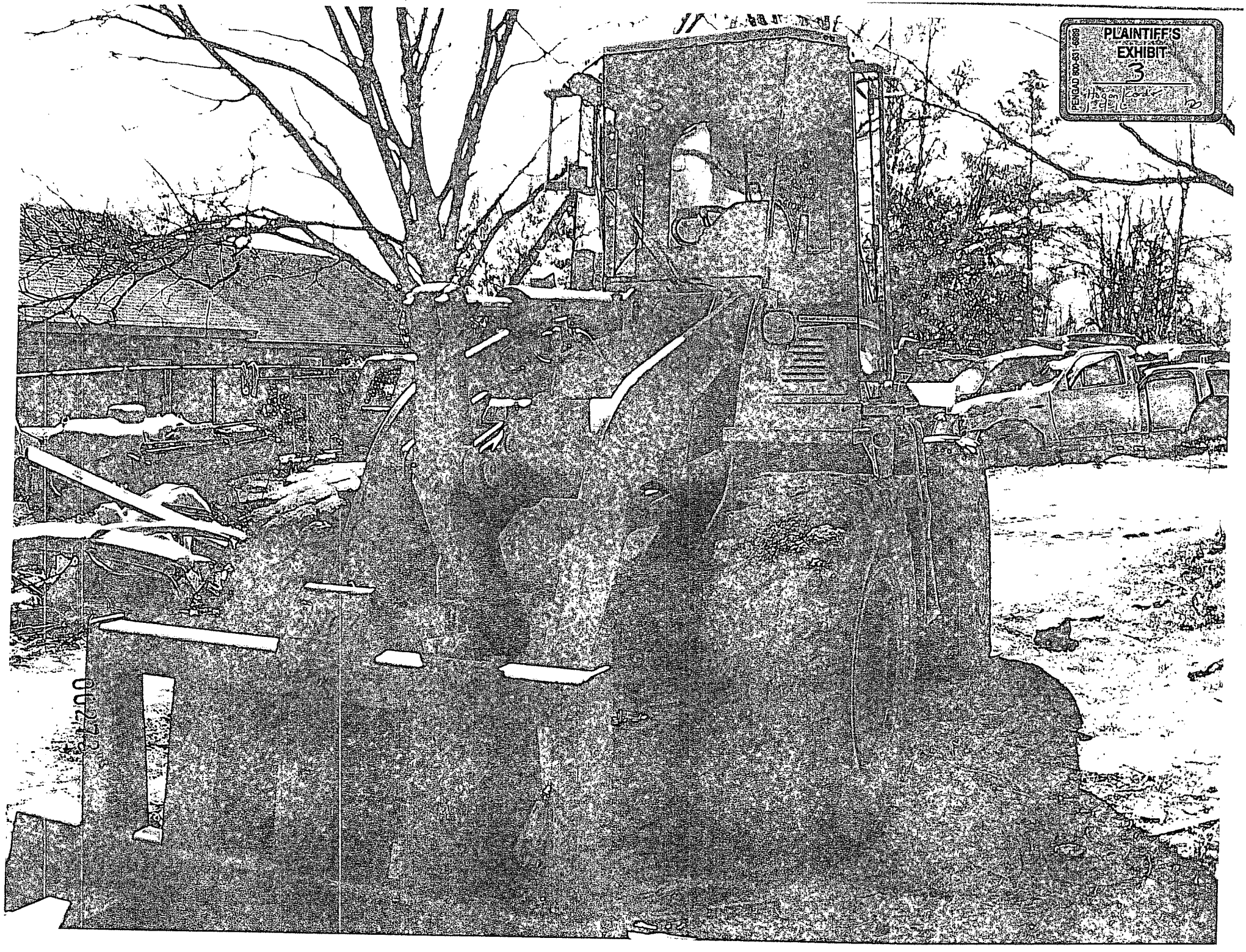
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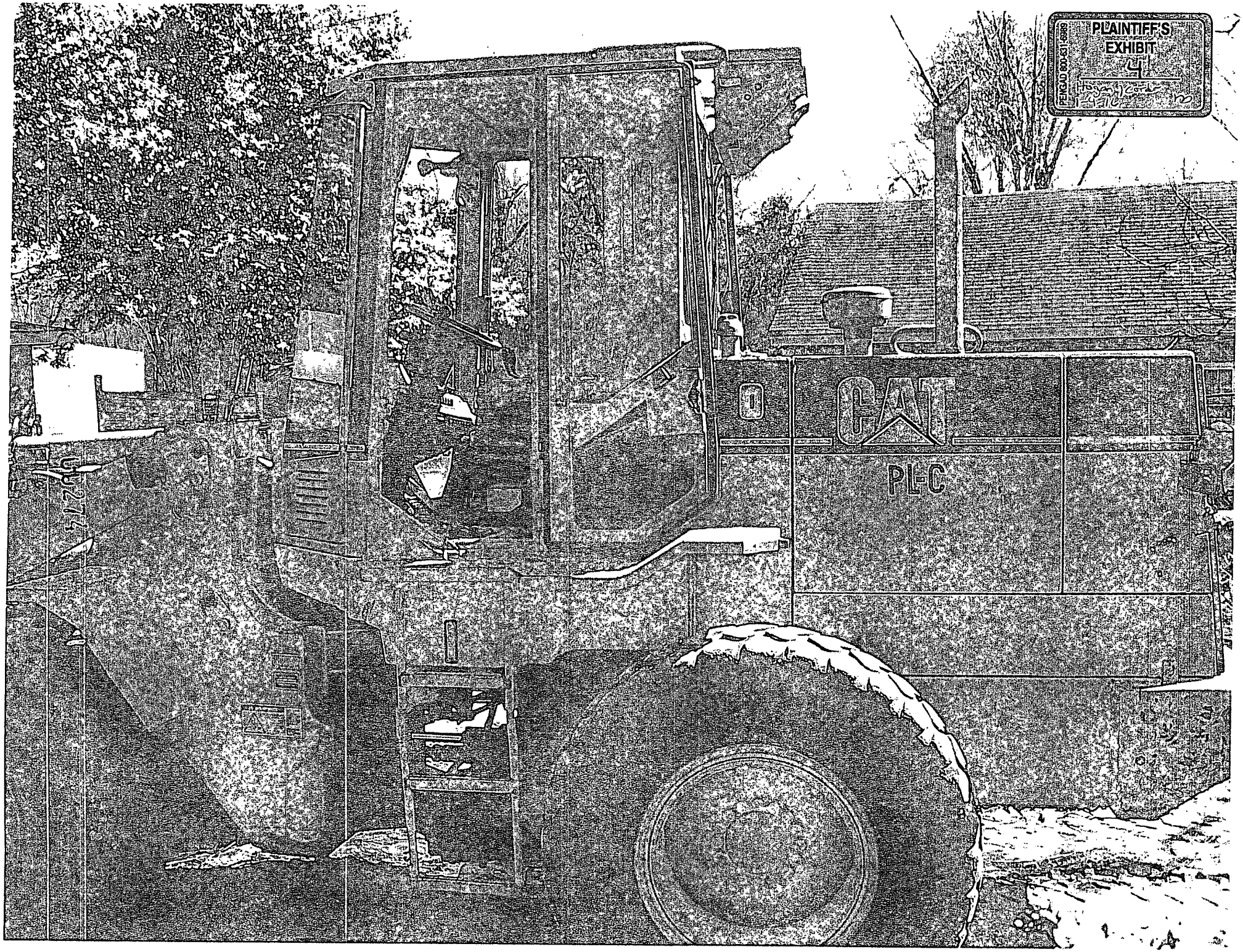
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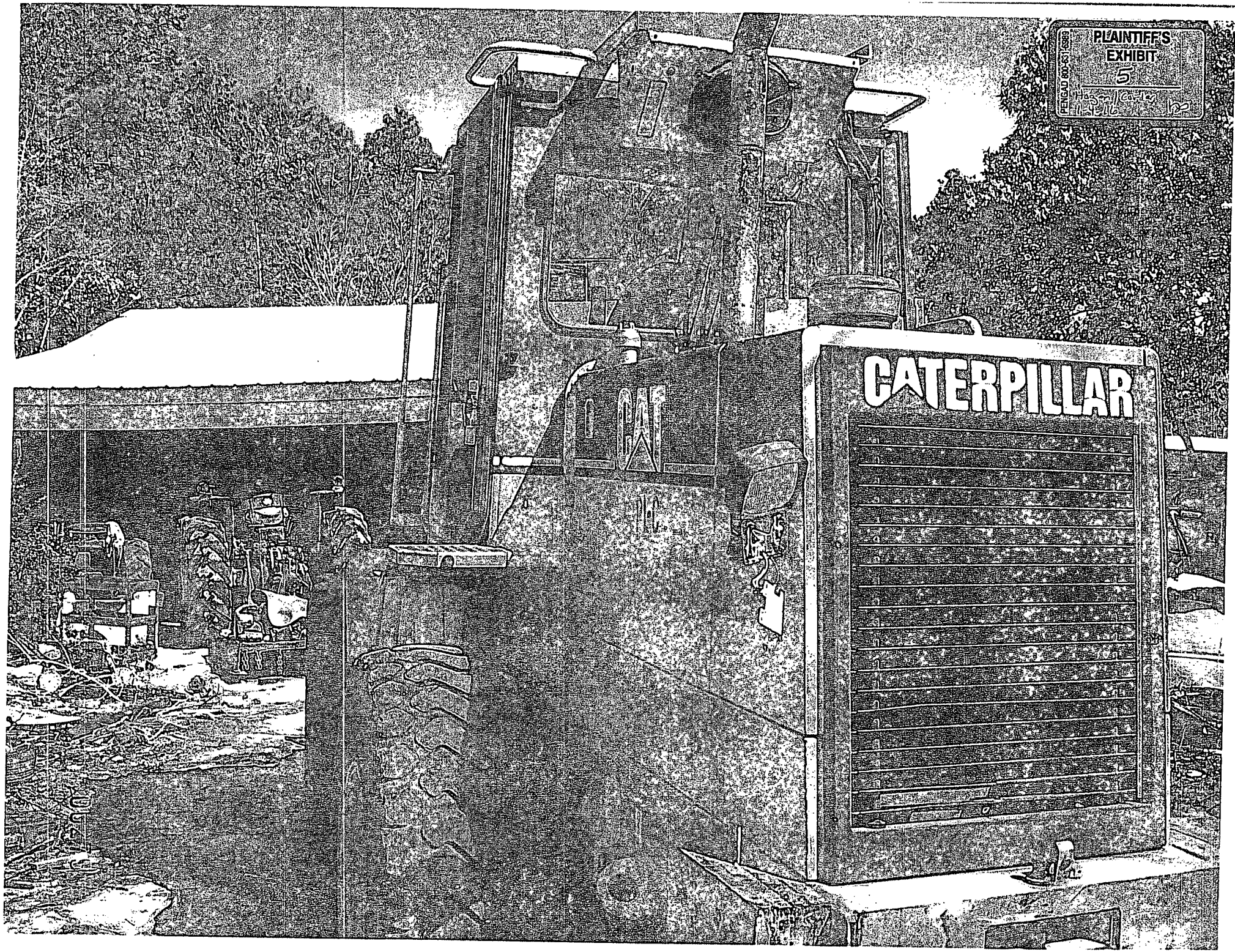
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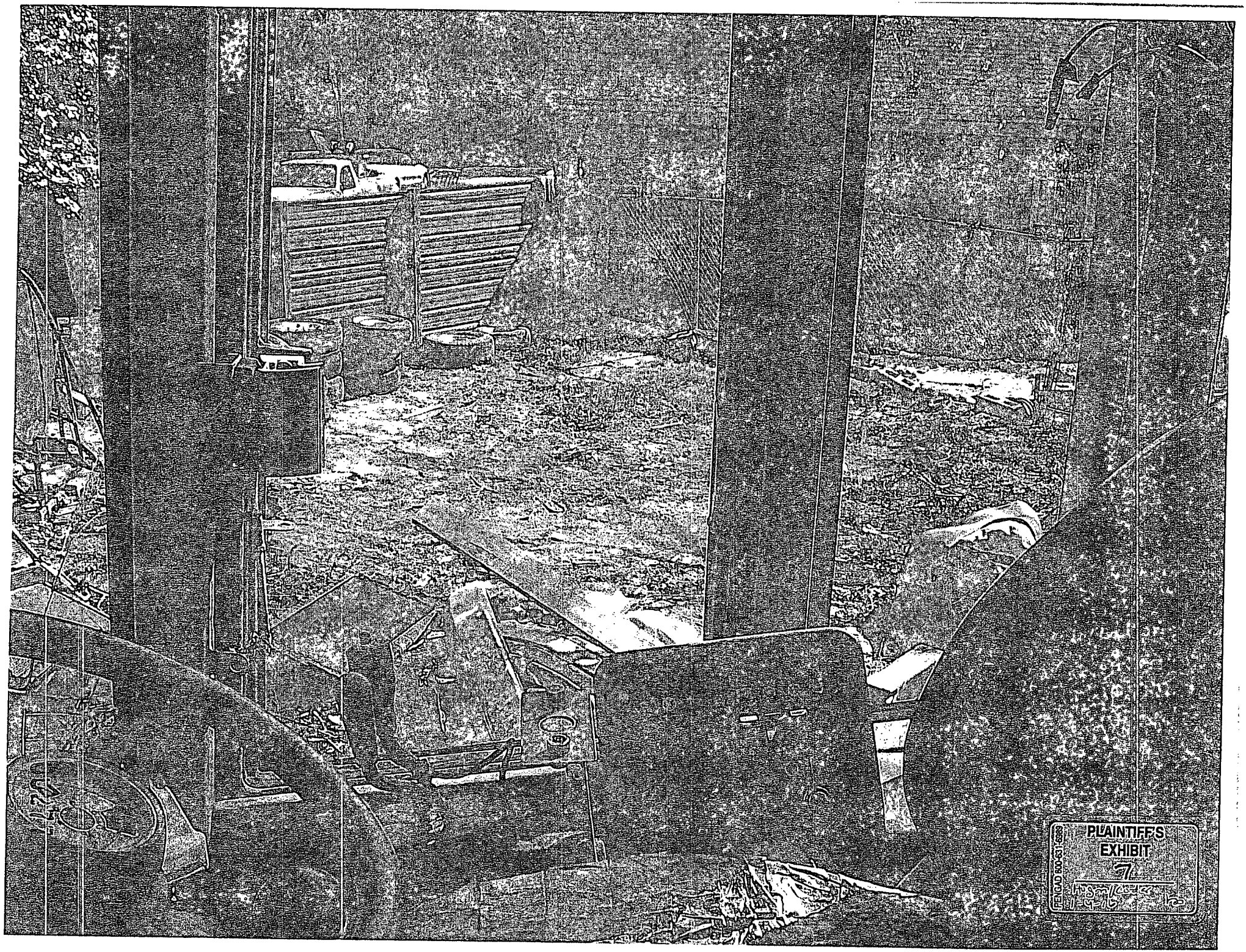
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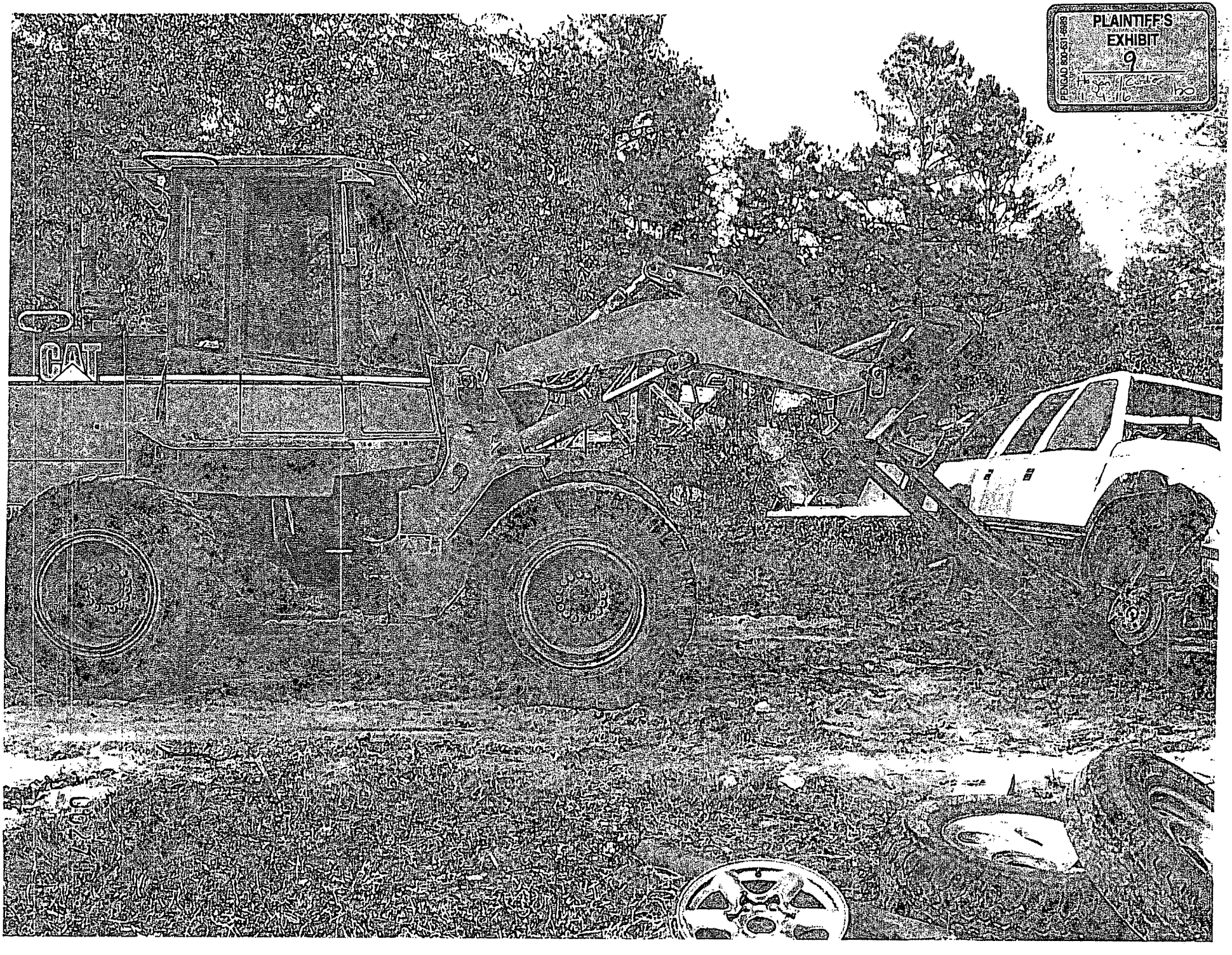

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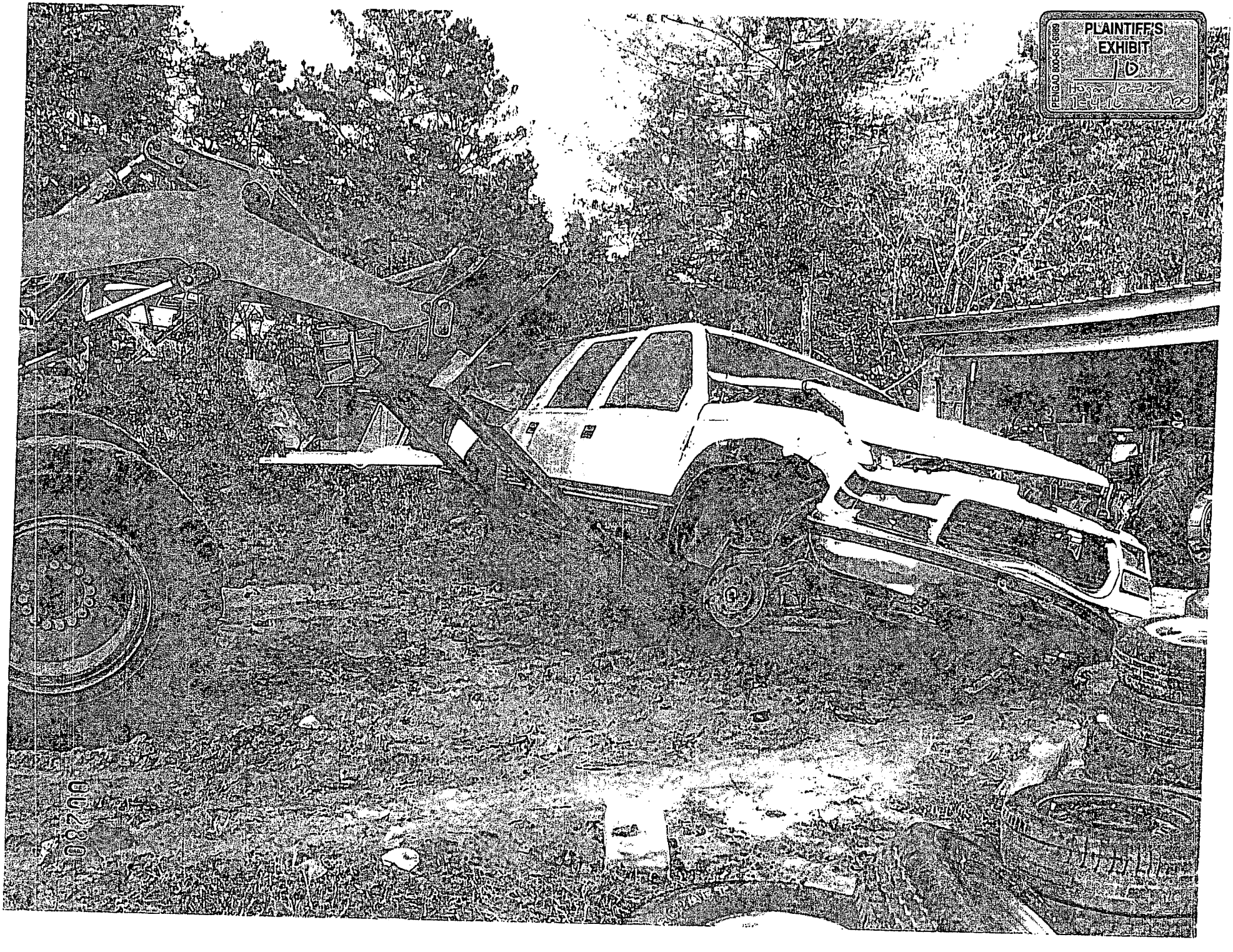
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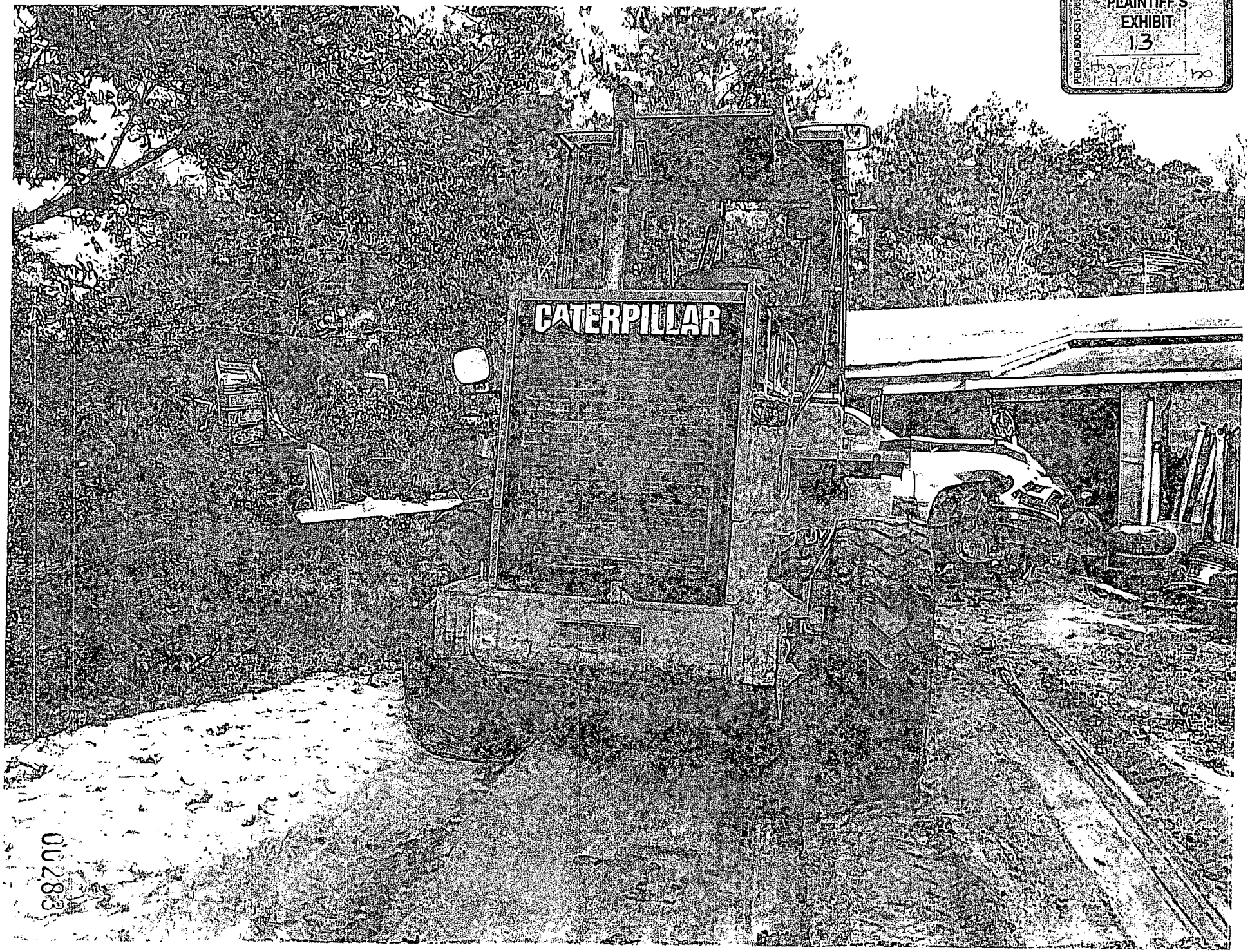

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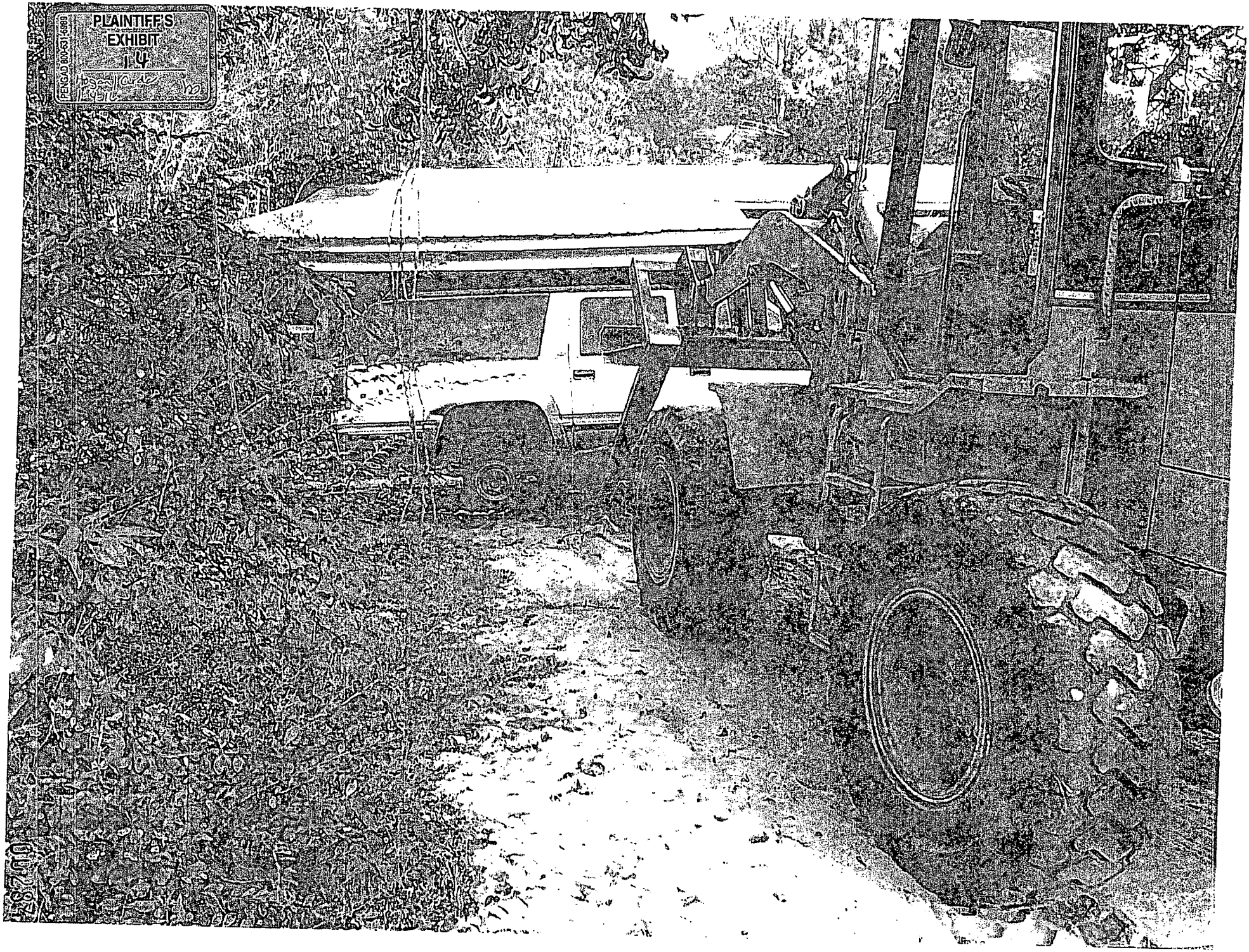
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EXHIBIT
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PLAINTIFF'S
EXHIBIT
15
PENCAD 800-631-6989

PLAINTIFF'S
EXHIBIT
16

I hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

August 16, 2016

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