

ORIGINAL

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case Nos: 2010-CP-12-00137; 2010-CP-12-00136; 2010-CP-12-00135; 2010-CP-12-00134;
2012-CP-12-00133

Jane Cherry, Personal Representative of the Estate of Nicholas Wayne Cherry, Appellant,

v.

Myers Timber Company, Inc, Respondent.

Taylor C., a minor under the age of 14 years, by and through mother and natural guardian, Jane
Cherry, Appellant,

v.

Myers Timber Company, Inc, Respondent.

Carlton Quinton as Personal Representative of the Estate of Hannah Nicole Quinton, Deceased,
Appellant,

v.

Myers Timber Company, Inc, Respondent

Alice Quinton and Carlton Quinton, Appellants,

v.

Myers Timber Company, Inc, Respondent.

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SC Court of Appeals

Carlton Quinton as Guardian for Timothy Q., a Minor under the Age of Eighteen, Appellant,

v.

Myers Timber Company, Inc, Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

Carlton Quinton as Guardian for Timothy
Quinton, a Minor under the Age of
Eighteen,

Plaintiff,

vs.

Myers Timber Company, Inc., et. al.

Defendant.

CIVIL CASE NO: 2010-CP-12-00137
2010-CP-12-00136
2010-CP-12-00135
2010-CP-12-00134
2010-CP-12-00133

ORDER FILED

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SEP 26 11:15

This matter came before the Court on motion of the Defendant for summary judgment. Attorneys L. Dale Dove and D. Bradley Jordan appeared for the Plaintiff. Attorney Forrest C. Wilkerson appeared for the Defendant, Myers Timber Company, Inc.

Plaintiff asserts that until Defendant complies with discovery requests, the Defendant's motion for summary judgment is premature and should not be heard. However, Plaintiff failed to file a motion to compel discovery responses and has failed to show any prejudice.

The Defendant George Rogers was driving a tractor trailer rig hauling long logs when he drove into an intersection and struck a passenger van. Rogers was hauling the logs for Charles Levister d/b/a Levister Logging (Levister) who had been hired by the Defendant Myers Timber Company, Inc. (Myers) to log, load and haul timber from a tract of land near Kershaw, South Carolina. Myers had a written contract with the tract's owner, Mr. Faulkenberry, to purchase, cut and remove standing timber from the tract. Myers was also required to keep the property in good condition along with other similar obligations. Myers had no trucks or equipment of its

own and relied entirely on Levister to perform all harvesting and hauling of timber. Myers hired Levister pursuant to an oral agreement, the only terms of which were the cut and haul rates Myers would pay Levister for harvesting and hauling the timber from the tract to the mills identified by Myers. This agreement was terminable by either party at will. Pursuant to its agreement with the mills, Myers was required to insure the vehicles used to haul the timber.

Defendant Myers moved for summary judgment arguing that as a matter of the law, Defendant Levister was an independent contractor and not an employee of Myers.

The Plaintiff and Defendant Myers both cite the case of *Norris v. Bryant*, 217 SC 389, 60 S.E.2d 844 (1950), as authority to support their respective positions. In that case, the plaintiff had a written contract with Grant to cut and haul the timber in question. Grant owned equipment necessary for cutting and hauling timber. The written contract in question gave the plaintiff certain rights to control the operation of cutting and clearing the timber, but the control was only as to the result and not as to the details of the day to day operation of cutting and hauling. The Court found that Grant was an independent contractor. The vehicle involved in the accident was driven by one Bryant who had been hired by Chappell who had provided the truck in question. The next question for the Court was whether or not Chappell was an employee of Grant or an independent contractor.

The relationship between Grant and Chappell appeared to be suspect. While Grant asserted that Chappell was an independent contractor, Grant could recall few facts concerning the business relationship that he had with Chappell. Shortly after the accident, Grant bought the truck that had been involved in the accident. Chappell did not testify. Chappell is the brother-in-law of Grant. Hauling timber was not part of Chappell's regular business. Grant testified that either could terminate their relationship and the Court found that such an arrangement could infer

that Grant had the right to control Chappell which is the essence of an employee-employer relationship. The Court said that the arrangement in question could be that of a casual employee and that this was a question for the jury.

The relationship between Levister and Myers is much closer to the relationship between the landowner and Grant than the relationship between Grant and Chappell.

Under South Carolina law, an employer is not liable for the torts of an independent contractor. *Creighton v. Coligny Plaza Ltd. Partnership*, 512 S.E.2d 510, 520 (S.C. App. 1998).

The relations of an independent contractor and an employee are distinguished by the extent of the control which the employer exercises over the employee in the manner in which he performs his work. Where the will of the employer is represented only in the result, and not in the manner by which it is accomplished, and the employer retains no control over the employee as to the manner or means of accomplishing the desired result, the employee is an independent contractor, and he, not his employer, is responsible for his own acts and contracts. In determining the nature of the parties' relationship, South Carolina courts consider a number of factors: (1) the contract between the parties; (2) whether there is direct evidence that the employer had the right to, or did, exercise control; (3) the method of payment; (4) which party furnishes the tools and equipment used by the worker; and (5) which party has the right to terminate the relationship.

An analysis of the traditional factors considered by South Carolina courts in determining the character of the parties' relationship compels the conclusion that, as a matter of law, Levister was an independent contractor for Myers. First, Myers had no right to exercise control over Levister. Levister could harvest the timber and transport it in any manner Levister saw fit. Second, Levister was not paid a wage or salary. Myers paid Levister based on the end result, which was the amount of timber harvested and delivered. Third, Levister furnished all of its own

equipment. Fourth, Myers had no right to hire or fire employees of Levister, including George Rogers. Therefore, Charles Levister d/b/a Levister Logging, the employer of George Rogers, was an independent contractor and Myers Timber is not liable or responsible for the acts of Levister Logging's employees. Defendant's motion for summary judgment is hereby granted.

IT IS SO ORDERED.


Brooks P. Goldsmith
Circuit Court Judge

September 23, 2011
Lancaster, South Carolina

FILED
2011 SEP 26 A 11:15
CLERK OF COURT
CHESTER CO S.C.

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

IN THE COURT OF COMMON PLEAS

JANE CHERRY, PERSONAL
REPRESENTATIVE OF THE ESTATE
OF NICHOLAS WAYNE CHERRY

PLAINTIFF,

VS.

GEORGE ROGERS, CHARLES
LEVISTER (DBA LEVISTER LOGGING)
MURRAY JOHNSON, AND JOE
LEVISTER

DEFENDANT.

CASE NUMBER 07-CP-12-414

DEPOSITION OF GEORGE ROGERS

CHESTER, SOUTH CAROLINA

NOVEMBER 17, 2009

 COPY

REPORTER: WILLIAM H. WHITE

DALLAS REPORTING
SERVING THE CAROLINAS FOR OVER TWENTY-FIVE YEARS
ROCK HILL, SOUTH CAROLINA
803-328-9640/TOLL FREE 1-877-871-6363

1 A. Yes.

2 Q. Now, at that time, you were the driver of this
3 tractor-trailer truck that had logs loaded on it.
4 Is that correct?

5 A. Yes.

6 Q. I would go back, now. Tell me about where -- I
7 guess, starting on that day, I'm interested in
8 where the logs came, what land, those sorts of
9 things. So if you'd kind of take me back that day
10 to where you went to work, that sort of thing, and
11 just take me through what happened up until you got
12 to that intersection?

13 A. Well, I had already had a load of wood on my truck
14 from the weekend. I got up that morning, checked
15 my truck out, and I went to the Bowater mill in
16 Rock Hill, got unloaded; and I went to -- We had
17 just moved on this place down in Kershaw, South
18 Carolina. I got down there, I guess, about ten or
19 so. And we had to push a road in there and get a
20 dock made off and everything.

21 Q. Now, you're going to need to tell me what you just
22 said. I don't know what that means.

23 A. Well, we had to clear off a place to put the load
24 in the trucks, to drag the wood up to load the
25 truck, make a dock, you know.

1 Q. A dock. Okay. Got you.

2 A. And I say that the truck in front of me, it got
3 loaded with a load of wood first and went down to
4 New South, a yard that was down in Camden. When he
5 got down there they called back to the woods and
6 told Mr. Levister don't send another truck down
7 there today because the mill was broke down, and
8 they couldn't take any more trucks. So we had just
9 about a load of logs on the truck, then.

10 So I told them, I said, well, why don't you
11 just take the truck, pull the logs back off and put
12 a load of pulpwood back on it and then I'll go back
13 to Rock Hill. So the guy there, Mr. Levister's
14 bossman, said, well, there ain't no use in doing
15 that since you're already about loaded. Just get
16 him up a load of logs and send it to Chester. And
17 so, Mr. Levister's son was measuring the logs and
18 cutting them off. I can't think of the guy's name
19 that was loading. I can't really think of his name
20 now but after we got the truck loaded, that's when
21 I left and started to Chester.

22 Q. When you started to Chester, was there any change
23 in the logs? Did any of them come off? Did
24 anybody put any more on? Or when you left the
25 yard, the field where you all -- the dock, when you

1 left the dock, then the tractor-trailer load didn't
2 change from the time that you left the dock to the
3 time that you got to the subject intersection?

4 A. No. It did not.

5 Q. Now, you said that you already had the logs on it
6 from the day before?

7 A. (Indicating yes)

8 Q. So the logs from the day before, did they still
9 make up part of the load that --

10 A. No. It was just a load of small pulp wood, and I
11 ~~took it to Rock Hill to the Bowater plant and~~
12 unloaded it.

13 Q. Okay. I'm sorry. All right. So you had that
14 load, and so you went to work that day and -- Now,
15 did the truck stay at -- where did the truck stay,
16 the tractor-trailer truck that you drove? Where
17 did it stay?

18 A. I kept it overnight.

19 Q. So that tractor-trailer truck, then, was at your
20 house that night with a load on it from the day
21 before?

22 A. Yes.

23 Q. And you drove the tractor-trailer truck from your
24 house -- was it the same address?

25 A. (Indicating yes)

Deposition of George Rogers

1 Q. From your house, same address in Chester, to the
2 Bowater plant?

3 A. Yes.

4 Q. And they unloaded that there?

5 A. Yes.

6 Q. And then you went to --

7 A. Kershaw.

8 Q. And that's where you picked up the load that you
9 were carrying at the time of this wreck?

10 A. Yes.

11 Q. The land -- I know before this you said you might
12 not know this but let me ask you anyway. The land
13 that y'all were on, do you know who owned that
14 land?

15 A. No. I don't.

16 Q. And so, is it common for you all to be cutting, or
17 Levister to be cutting timber off of not just his
18 land but land that would belong to other people?
19 Is that --

20 A. Yes, sir.

21 Q. And so you don't know if Levister owned this land
22 or if somebody else owned it?

23 A. No, but I don't -- Well, I'm quite sure he didn't
24 because, see, he got a bossman, too, and he had
25 just started working for this guy. I don't know

Deposition of George Rogers

1 his name, but he had just started working for him,
2 and this guy wanted to show him the tract of wood
3 to cut.

4 Q. Okay. Tell me about the bossman. You said --
5 We're talking about Charles Levister had a bossman.
6 Is that right?

7 A. Yeah.

8 Q. Tell me, do you know the person's name?

9 A. No, I don't know.

10 Q. Tell me what you know about him. How long --
11 well, first of all, how long did you know that he
12 had a bossman?

13 A. Well, this particular guy, he had just started
14 working for. The man he used to work for, all I
15 can remember is Jim something. I can't remember
16 his whole name.

17 Q. But that wasn't this guy? That was the guy before?

18 A. Yes. Right. The guy before was named Jim, but
19 this new guy I don't -- that day was the first time
20 I ever saw him, and I ain't saw him since then.

21 Q. Now, help me understand, because this is one of
22 those things that might be, you know, important for
23 us to know. I mean, the very reason that we want
24 to take this deposition today, so as much as you
25 can respond to our questions I would really

Deposition of George Rogers

1 appreciate it. The bossman, how would you describe
2 -- tell me about the relationship. I don't
3 understand the relationship that Charles Levister
4 then had a bossman. Help me to understand what
5 that means?

6 A. Okay. It's, like, he's got a man that go around
7 and don't do nothing but buy wood for certain
8 people. Okay?

9 Q. Okay.

10 A. Charles cut the wood, hauled it, then on Friday he
11 would take these tickets to this man and this man
12 would pay him off.

13 Q. I got you. Okay. How long had Charles Levister
14 been operating business like that?

15 A. I really don't know. I had been with him about a
16 year or so, I guess; so how long he had been in
17 business before then I couldn't really say.

18 Q. So you worked for Charles Levister for about a
19 year?

20 A. Yeah.

21 Q. And the process that you just described, where the
22 bossman would go around and buy timber from people,
23 and he would get Charles Levister to come in and
24 cut it -- is that right?

25 A. Yes.

Deposition of George Rogers

1 Q. And then Charles Levister would take whatever the
2 tickets are for the wood he had processed and give
3 it to the bossman and the bossman would pay him.
4 Is that correct?

5 A. Yes, sir.

6 Q. Okay. So Jim was the bossman that you had most
7 experience with?

8 A. Yes.

9 Q. And then on this particular day, on March 26 of
10 2007, then, the bossman was a new guy?

11 A. Yes.

12 Q. Did you get the impression that he worked for Jim,
13 or was it somebody different?

14 A. Well, Mr. Levister said it was somebody entirely
15 different.

16 Q. Okay.

17 A. A whole different man.

18 Q. Okay. Going back to Jim, did Jim have a company
19 name? Was there a company or anything, you think,
20 anything on his truck or his vehicle?

21 A. Let's see. It's in Whitmire. I know it, but I
22 just can't think of the name of it now. It's right
23 in the -- it's soon as you go into Whitmire. It's
24 -- Let me see. I can't think of the name. I know
25 it, but I just can't think of it.

Deposition of George Rogers

1 bossman, another bossman. Is that right?

2 A. Yes.

3 Q. So another bossman. And you know this because
4 Charles Levister told you that?

5 A. Yes.

6 Q. Did he tell you on that day? Was that the first
7 day you had seen him, or had he worked for him days
8 before or was that the very first day?

9 A. That's the first day that I know of.

10 Q. And so Charles Levister told you that day that that
11 was a new guy?

12 A. Yes.

13 Q. What did he say?

14 A. He say, well, like I said, Butch Green, I forgot
15 the name, but he say he wasn't working with them no
16 longer, and he was going with this guy. And, like
17 I say, when I got to the woods that morning
18 Levister was already there. Him and Mr. Levister,
19 I guess they were walking the line around the
20 place. That was my first time ever seeing him, and
21 I don't know whether he had had any dealing with
22 him before or not, before.

23 Q. Did he say why he had changed?

24 A. No, not really.

25 Q. Now, the guy that he was walking around with, did

Deposition of George Rogers

1 that guy -- did you see that guy's vehicle?

2 A. Yeah. He was driving, I want to say, a gray
3 Silverado pickup truck.

4 Q. Did it have anything on it saying a company logo,
5 or anything like that?

6 A. No.

7 Q. Now who would know the name of that company that
8 Charles was working for that day?

9 A. His son is probably about the only one that I would
10 know.

11 Q. And his son, what's his name?

12 A. Charles Levister, Jr.

13 Q. Now how old is Charles Levister, Jr.?

14 A. Not real old. He's a young fellow. I think he
15 just got married and he got a young baby, so he's
16 not real old. I'll say early 20's, something like.

17 Q. What name do people call him?

18 A. Chuck.

19 Q. Chuck. Okay. Now on that day when you went out
20 there, what was Chuck doing?

21 A. I think he started off running the loader. But,
22 like I say, when I got ready to get, loaded the
23 other driver called back and said not to sent more
24 wood. Then he started measuring the logs to go
25 back and finish my truck out so I could come to

Deposition of George Rogers

- 1 A. Right.
- 2 Q. And then Chuck was out there measuring the logs,
3 and he'd have to cut the ends off if they were too
4 long?
- 5 A. Yes.
- 6 Q. Now, how was it determined how much wood to put on
7 a truck? What's an appropriate load, or a legal
8 load and an illegal load, I mean as far as -- I
9 mean, how can you tell that? Or is there such a
10 thing, first of all? Is there --
- 11 A. No. Well, most loggers, now, they got scales in
12 the bushes. You know, they'll put so much wood on
13 there and then pull the truck up and see how much
14 they got on there, then.
- 15 Q. I got you.
- 16 A. Now Mr. Levister, he didn't have any of those so he
17 just took a guess at it. Go to the yard with the
18 first load, then he'll see how much you had on
19 there; and then, they try to judge it by that.
- 20 Q. Okay. I guess different wood weighs different
21 things?
- 22 A. Right.
- 23 Q. And so it was -- Now, the guy that was loading,
24 both of them worked for Mr. Levister?
- 25 A. Yes.

Deposition of George Rogers

1 Q. Going back, is there anybody else with Charles
2 Levister's company, Levister Logging, is there
3 anybody else there who would know who this bossman
4 was that he was working for that day?

5 A. Probably his wife, or either Murray Johnson on
6 there. He might know.

7 Q. Okay.

8 A. Joe Levister on there, I don't even know who he is.

9 Q. We're still trying to figure that one out. All
10 right. Tell me, now, when he worked for him what
11 all --- the company that Joe Levister worked for,
12 whoever he was cutting for, what would they do?
13 Would they just show him the area to cut? I mean,
14 they surely would take him to the plot of land and
15 tell him to cut trees on this particular area.

16 A. Yes.

17 Q. Is that what happened on that day? Did you see
18 them going out, looking at that?

19 A. Well, like I said, I saw them coming out the woods,
20 so I don't know whether they were walking the line,
21 you know, because all property got property lines
22 you can't go over. So I assume that's what he was
23 doing, showing him the property line.

24 Q. Okay. Did that guy do anything else? Did you see
25 him do anything else, say anything else?

Deposition of George Rogers

1 A. No. He was there the whole time I was there
2 getting loaded because, like I told you, when I
3 told them -- after the guy called back, I told
4 them, give me a load of pulpwood to go back. He
5 was the one came up with the idea, you know, let's
6 just measure the logs and send them to Chester,
7 since they already on there.

8 Q. So tell me as best you can, then, about that. Let
9 me kind of go back and get a running start so I can
10 understand it. You'd left home that morning with
11 your truck that had pulp -- was it pulpwood?

12 A. Yeah.

13 Q. Pulpwood on it, and you took it to Bowater. Then
14 you went to Kershaw and you got ready for your next
15 load of logs. The guy that was in the truck ahead
16 of you had his load put on, then your truck pulls
17 up to an area, or you just stay sitting right
18 there?

19 A. No. Soon as he pulled up from the loader and left
20 I turned around and backed up under the loader.

21 Q. Okay. So you backed up under the loader. And
22 then, Chuck started loading the logs. Is that
23 right?

24 A. Yes.

25 Q. Then this guy who used to work for Chester Wood, he

Deposition of George Rogers

- 1 then took over and started loading the logs?
- 2 A. Yes.
- 3 Q. But in between there was this phone call that came
- 4 in about don't send any more to --
- 5 A. Camden.
- 6 Q. Camden? Okay. Now, who did that phone call come
- 7 into? Do you know?
- 8 A. Mr. Levister.
- 9 Q. So, Charles Levister, Sr.?
- 10 A. Yes, sir.
- 11 Q. Did you hear him talking on the phone, see him
- 12 talking on the phone? How do you know that
- 13 happened?
- 14 A. Well, he just came and told us. We were standing
- 15 on the other side of the truck, over in front of
- 16 the truck, while they were loading. And he came
- 17 over and said, well, Dog just called back and said
- 18 that they say don't sent over more wood because the
- 19 mill's broke down.
- 20 Q. Okay. So you're standing in front of your truck
- 21 while it's being loaded?
- 22 A. (Indicating yes)
- 23 Q. And who's loading it, then, while you're standing
- 24 with Mr. Levister?
- 25 A. Chuck.

Deposition of George Rogers

1 Q. And then at some point Mr. Levister walked over to
2 you, you and these two other people, and then what
3 did he say?

4 A. That's when he said Dog -- That's what we call the
5 other driver, Dog. That's when he say Dog told him
6 that they said not to send no more wood down there
7 because the mill was broke down.

8 Q. Okay.

9 A. And I said well, then, let's put a load of pulpwood
10 back on there, and I can go back to Rock Hill to
11 Bowater. And that's when this bossman say, no. He
12 says, logs is already on there. Let's just measure
13 the rest of them and send them on to Chester.

14 Q. Okay. And so before he got that phone call they
15 were over there at the loader. Is that right? He
16 and the bossman?

17 A. That's right.

18 Q. And Chuck was operating the loader?

19 A. Right.

20 Q. About how far was that from you? I mean, the
21 length of this room? This room is probably 15 feet
22 long.

23 A. The loader be sitting here. They drag wood up on
24 this side, and the truck is right beside the load.
25 We just have enough room to walk up and down

Deposition of George Rogers

1 discussion and Mr. Charles Levister's discussion?

2 A. Yes, sir.

3 Q. When you told him about loading pulpwood on your
4 truck did the bossman actually respond to your
5 comment?

6 A. Yeah. He said, well, since you already got logs on
7 there let's just finish the load and send it on to
8 Chester. That was his idea.

9 Q. Okay. And then, I mean, did somebody say, yeah,
10 we'll do that or who made that decision?

11 A. Well, Mr. Levister told us, he say, well, that's
12 okay with him. We would go ahead and finish it
13 like that, send it over to Chester, then, if that's
14 what he wanted you to do.

15 Q. And then, who told Chuck what to do, or --

16 A. Mr. Levister.

17 Q. So Mr. Levister went over and told Chuck, then --

18 A. He called him on down and told him what Dog had
19 said and what the bossman said. So that's when he
20 grabbed a saw and started measuring logs, and the
21 other guy got in the loader to finish it.

22 Q. Now, where did the bossman go? What did he do?

23 A. I can't recall. I don't know whether they went
24 back over there to their truck or not.

25 Q. Did he do anything with the measuring? I mean, did

Deposition of George Rogers

1 Chuck already know how long to measure it? Did
2 somebody have to tell him or what?

3 A. Yeah. We got a -- You keep a nine-foot stick and,
4 well, one person -- well, I was doing the
5 measuring, and he was cutting off where I, you know
6 --

7 Q. So did you take the nine-foot stick and put it on
8 the back of the truck and see how --

9 A. You put it down on the log and, you know --

10 Q. Oh, okay.

11 A. They all got to be nine feet, 17 feet, 27, on like
12 that.

13 Q. I got you. So you would actually measure every
14 tree that went on there? Every log that went on
15 there?

16 A. Yeah. Right.

17 Q. And then once you got to wherever a multiple of
18 nine stopped and then he couldn't make another nine
19 foot, then he just cut that off?

20 A. Right.

21 Q. That's an interesting thing. Okay. So you were
22 doing that and then you were using the nine-foot
23 stick; and then Chuck would take a chainsaw, I
24 guess, and cut it off?

25 A. Yes.

Deposition of George Rogers

1 Q. And did the bossman do anything about helping with
2 that, or tell you anything else to do that day?

3 A. No.

4 Q. So once you got the load, then, and the load was
5 going to Chester Wood -- is that right?

6 A. Yes.

7 Q. And that's where you were going at the time when
8 this wreck happened?

9 A. Yes.

10 Q. When, once the truck got loaded, did you see the
11 bossman any more that day?

12 A. Not once I left out of the woods, I didn't.

13 Q. Were there ever times when the bossman -- no. I
14 guess we have to go back to Butch Green's company.
15 Were there ever times when Butch Green's company
16 would give instructions about how much wood to put
17 on the truck that you were driving, that you saw?

18 A. No. That was left entirely up to the bossman, like
19 I said.

20 Q. Now, --

21 A. Well, that'd be Mr. Levister.

22 Q. Mr. Levister. Okay.

23 A. The truck owner.

24 Q. I got you. So Butch Green's company never gave you
25 much instruction about, or any instruction -- They

Deposition of George Rogers

1 Q. And based on those tickets, the normal process, who
2 would get paid? Would Charles Levister's company
3 get paid, or would the bossman's -- would Butch
4 Green's company get paid?

5 A. The mill, Chester Wood, Bowater mill, they would
6 pay Butch Green. Butch Green would pay Mr.
7 Levister.

8 Q. Okay. Got that. Were there any requirements or
9 anything else that Butch Green's company would have
10 told or required of Charles Levister, other than
11 cutting the wood, loading it, taking it to wherever
12 they said to take it? Was that pretty much it, or
13 were they putting any other requirements on there?

14 A. Well, that's about as far as I know.

15 Q. Was it ever reported to you that Butch Green's
16 company ever said, hey, we need to do something
17 different? We need to do it different because the
18 bossman's -- or Butch Green's company said we need
19 to do something different?

20 A. Not to me.

21 Q. So the wood was going to Chester Wood.

22 Mr. Dove - Off the record for a second.

23 (Off the record)

24 By Mr. Dove: (Resuming)

25 Q. We just took a break and we're coming back in. I

1 want to ask you a couple of more things about the
2 company, the company itself. You had worked for
3 Charles Levister for about a year. Is that right?

4 A. Right.

5 Q. How often were you paid?

6 A. Weekly.

7 Q. Every week. Okay. You got paid on when?

8 A. Friday.

9 Q. And you got a check?

10 A. Yeah.

11 Q. The checks were drawn on what business?

12 A. What banking institution?

13 Q. I'm sorry. The check, was it Charles Levister's
14 personal check? Was it Levister Logging's check?

15 A. Levister Logging.

16 Q. Did you ever get a check from anybody else other
17 than Levister Logging?

18 A. No.

19 Q. And from the time you started to the time you
20 finished it was always Levister Logging?

21 A. Yes.

22 Q. After the wreck happened, did you keep driving for
23 Charles Levister?

24 A. No.

25 Q. So that was the last, on March 27, 2007 was the

Deposition of George Rogers

1 Q. So nobody had insurance -- nobody had any vehicle
2 that had any insurance on it?

3 A. That's right.

4 Q. Did anybody live in your house at the time who was
5 not a relative of yours, did they have a vehicle
6 that had insurance on it?

7 A. No.

8 Q. So when you weren't driving the truck -- or was
9 that your normal habit that the tractor-trailer
10 truck that you were driving was your vehicle that
11 got you back and forth to work?

12 A. Yes.

13 Q. Were there occasions where other people took you to
14 work?

15 A. No. The only time I didn't have the truck is, he
16 had the truck at home, doing something to it. And
17 he would come to pick me up, take me to his house
18 to pick the truck up then.

19 Q. You're talking about Charles Levister?

20 A. Right.

21 Q. As far as insurance coverage that Charles Levister
22 may have, do you have any knowledge, or does any --
23 I think before the deposition took place I told you
24 that the insurance policy that Levister Logging had
25 was a \$500,000 policy and that had paid to, on this

Deposition of George Rogers

1 been pulling that particular trailer? I mean, had
2 it been a day, or a week, a month, or longer?

3 A. I want to say a couple of days, because I can't
4 remember if it was Wednesday or Thursday when we
5 went to Bowater and it was crowded. What I do, you
6 know, the one that I had had, I dropped it at the
7 truck stop and picked that one up. I don't know
8 how many days exactly that had been, though.

9 Q. So some number of days before the wreck happened,
10 before March 26 of 2007, you had swapped out
11 trailers. You had gotten another trailer?

12 A. Yes.

13 Q. And that's the trailer that you had kept for a
14 couple of days or been pulling for a couple of
15 days; and that's the trailer that was involved in
16 the wreck?

17 A. Yes.

18 Q. I want to ask you a little bit about the
19 maintenance on those trailers, and the trucks. Who
20 did the maintenance on the operating systems? You
21 know, the braking, the motors, and all that kind of
22 stuff? Who did the maintenance on those?

23 Q. Well, if something came up wrong we'd tell him and
24 he'd say, well, bring the trailer to my house
25 Friday afternoon.

Deposition of George Rogers

1 Q. And him, you're talking about Charles Levister?

2 A. Levister, right. To his house, and then he had
3 another guy that did brake parts and stuff like
4 that for him; but he passed away, too, which was
5 named Tommy Mitchell. But as far as who actually
6 did it, I don't know. Like I say, I took it over
7 there Friday. If something was wrong, I'd take it
8 over there on Friday and he'd call me Sunday and
9 say, well, your truck be ready and I'll come to
10 pick you up in the morning to go get it.

11 Q. So now, when this wreck happened, was Tommy
12 Mitchell the guy, as far as you know, was working
13 on the brakes for Charles Levister vehicles and the
14 trailers?

15 A. Yes.

16 Q. Do you know if the trailer that you were driving at
17 the wreck, do you know if that trailer had been
18 serviced recently by Tommy Mitchell?

19 A. No, I can't say.

20 Q. The tractor, or the truck that you were driving on
21 the day of the wreck, do you recall if that truck
22 had been -- the brakes had been serviced?

23 A. Two weeks before.

24 Q. Okay. Tell me about that?

25 A. When I got there Friday afternoon he told me, he

Deposition of George Rogers

1 said, well, Mr. Levister said, bring your truck
2 over to the house this afternoon and over the
3 weekend I'm going to do a full service job on it.
4 Got over there that Friday afternoon, the truck and
5 the trailer, and like I said, he called me back
6 Sunday night and told me the truck was ready and
7 he'd be over there early Monday morning to take me
8 over there to get it.

9 Q. Did Tommy Mitchell, as far as you know, or do you
10 know specifically if Tommy Mitchell worked on the
11 brakes on that truck?

12 A. I can't say.

13 Q. Now, did Tommy Mitchell -- was he an employee of
14 Charles Levister or did he own his own company?

15 A. Yeah, he had his own company, but he did work for
16 people with trucks, you know, like putting brake
17 shoes on, like that. He would help them out.

18 Q. Did he work for somebody, or did he work for
19 himself?

20 A. He worked for himself.

21 Q. And you said that he passed away, too, passed on,
22 too?

23 A. Yes.

24 Q. About how long ago?

25 A. It was in 2007, too. It wasn't -- I want to say

Deposition of George Rogers

- 1 he just worked for it?
- 2 A. I really don't know that either because when I
3 first started they had two different crews, and
4 then they just combined both of them together. So
5 I don't know whether they partners or not.
- 6 Q. And both of those crews, did one operate one crew
7 and one operate the other crew?
- 8 A. Yeah, when I first started.
- 9 Q. So Chuck operated one crew --
- 10 A. Yes, sir.
- 11 Q. -- and Charles operated the other crew?
- 12 A. Yes, sir.
- 13 Q. Now, did you work for both of them? Did you do
14 work for both of them, or just Charles?
- 15 A. Yeah. We just go on either job, because they were
16 mostly on the same place. We had one loader here
17 and one --
- 18 Q. So you didn't get two different checks from both
19 companies --
- 20 A. No.
- 21 Q. When you're driving a truck, and I don't know very
22 much about what all you have to do, but I've seen
23 weigh stations and stuff. Have you ever had to
24 stop at those?
- 25 A. No, but in the logging business they got what you

Deposition of George Rogers

1 He's going to ask you some questions right
2 now. But I may have some more questions in a
3 minute but, again, we're going to operate on
4 that agreement, you know, that if I need to
5 ask you some more questions I'll try to stay
6 away from questions about the wreck, and try
7 to respect that. I will come back or may come
8 back at some point when you get a chance to
9 get a lawyer with you, and ask you questions
10 about those things. So we're going to take a
11 break for just a second and let me talk with
12 him.

13 (Off the record)

14 By Mr. Dove: (Resuming)

15 Q. Okay. Just a couple more and I think I'm done.
16 Mr. Rogers, I'm just going to ask you just a few
17 more things. You had mentioned a little while ago
18 about a workers' comp. Did you file a workers'
19 compensation claim, and if you did, what I'm
20 looking for is the name of the company, if you
21 know it?

22 A. Forestry Mutual.

23 Q. Forest Mutual?

24 A. Forestry Mutual.

25 Q. Forestry Mutual. Do you remember where they were

Deposition of George Rogers

1 out of?

2 A. I want to say Raleigh, North Carolina.

3 Q. Anything else, any other information that would
4 help us, help me, determine who they were or how to
5 get in touch with them? I mean, I know you don't
6 have a telephone number.

7 A. No, and -- She's named Pam, or something. I don't
8 know her name, but she's named Pam.

9 Q. But it was Forestry Mutual?

10 A. Right.

11 Q. And you think out of Raleigh, North Carolina?

12 A. Yes, sir.

13 Q. And that would have been workers' compensation
14 Charles Levister would have provided?

15 A. Yes, sir.

16 Q. One of the people, and I don't even know where we
17 got this, but one of the names about the property
18 owners or somebody that was associated with the
19 land that the trees came off of was a person named
20 Meyers. Does that --

21 A. That rings a bell. I can't rightly say, but it
22 sounds -- I heard it somewhere, too. So it could
23 be. I can't really say.

24 Q. Is there a name like Meyers Logging, or Meyers
25 owning the -- as the property owner? Or, what

Deposition of George Rogers

- 1 rings the bell with you?
- 2 A. I don't know whether it was the man he was working
3 for or the property owner. I can't rightly say.
4 But like I said, that name, it rings a bell, but I
5 can't say. I don't rightly know who that is.
- 6 Q. You don't know whether Meyers owned a lot of land
7 or anything like that, or --
- 8 A. Yeah. I couldn't say.
- 9 Q. The location of this, if you were going to try to
10 tell me about -- Let me ask you about these guys, a
11 Freddy Meyers or a Mitch Meyers?
- 12 A. That's it. That's him. Yes.
- 13 Q. Okay. Tell me about -- all right. So Mitch Meyers
14 was who?
- 15 A. Mr. Levister's bossman. Those were the new guys he
16 was working with. It was two of them. It was two
17 brothers, and that's who they was.
- 18 Q. Okay. So as far as you know, Mitch Meyers and
19 Freddy Meyers, or Mitch Meyers was the guy out
20 there that day?
- 21 A. I want to say Mitch.
- 22 Q. And it was your understanding that he had a brother
23 that was helping him or something? Or what?
- 24 A. Yes. The two of them was in business together.
- 25 Q. Tell me about that. Tell me what you know about

Deposition of George Rogers

1 A. Right.

2 Q. And you were saying that the Meyers brothers, or
3 Mr. Mitch Meyers and whoever else, they were doing
4 business with New South?

5 A. (Indicating yes)

6 Q. Now, how do you know that?

7 A. That's where they called back and told -- that's
8 where the wood was going to at first that I was
9 telling you about.

10 Q. Now, do you know if they had any -- if they owned
11 any part of it or was it represented that they had
12 some interest in it or that they just sent logs
13 there?

14 A. I think they just sent logs there.

15 Q. Anything else that you recall about Mitch Meyers
16 that day? Other than what you've told me already,
17 is there anything else that you recall that he did,
18 said, owned, anything like that?

19 A. Not that I remember, no.

20 Q. On that day, did Mitch Meyers participate in any
21 way at all, what you've already testified to, any
22 way at all in the loading of that truck?

23 A. No.

24 Q. I think I've already asked you this, but as far as
25 you know, the way that you told me that Charles

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Carlton Quinton as Guardian for
Timothy Quinton, a Minor under the
Age of Eighteen,

Plaintiff,

vs.

Myers Timber Company, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

Case Numbers: 10-CP-12-00137
10-CP-12-00136
10-CP-12-00135
10-CP-12-00134
10-CP-12-00133

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Alice Quinton and Carlton Quinton,

Plaintiffs,

Vs.

Myers Timber Company, Inc.,

Defendant.

DEPOSITION OF DAVID M. STINES

ROCK HILL, SOUTH CAROLINA

DECEMBER 13, 2010

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Carlton Quinton as Personal
Representative of the Estate of
Hannah Nicole Quinton, deceased,

Plaintiff,

Vs.

Myers Timber Company, Inc.,

Defendant.

REPORTER: Robbie E. Moskau, CCR

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1 A Not a license. Now, I have a -- I graduated from
2 Clemson in forestry, so I have my forestry license.

3 Q Okay.

4 A But, no, you don't have to have a license.

5 Q Is there any sort of state designation or state
6 testing, or anything like that, that people in your
7 industry could do what you do?

8 A We have to have -- go periodically -- and I can't
9 remember how often it is -- to be TOP -- and I can't
10 even remember what TOP stands for -- but, TOP
11 certified, the mills require.

12 Q TOP logger?

13 A That's it.

14 Q Okay.

15 A It requires the buyers -- at least one from each
16 company and at least one owner-operator from
17 logging crews. I think, even consultants have to --
18 I'm not sure about them.

19 Q Okay.

20 A But, yeah, we do have to do that periodically.

21 Q And have you taken that TOP logger -- or, do you
22 have the TOP logger certification?

23 A Yes, sir.

24 Q So, what does it take to get that; and, is there any
25 education requirements or training -- or special

1 A It covers stuff like that.

2 Q Does it cover like the management of how you
3 would go through and different types of cutting,
4 whether you clear-cut something or whether you
5 selective-cut?

6 A I can't remember.

7 Q How about dealing with landowners -- I mean, that's
8 sort of personal. Because, I know there's a lot of
9 PR in what y'all do.

10 A Yeah. No, it doesn't cover any of that.

11 Q And from the logger's standpoint, does it give them
12 any direction on best practices on actually harvest-
13 ing the timber, or anything?

14 A From what I can remember, it's mainly dealing with
15 just taking care of the environmentally-friendly --

16 Q I got you.

17 A -- aspects of the business.

18 Q Okay. And how about the actual -- Does it cover
19 anything about loading it onto trucks or trailers, or
20 whatever?

21 A If it does, I can't remember.

22 Q Anything having to do with transporting it, issues in
23 transporting lumber or timber?

24 A I can't remember.

25 Q And how often -- Do you know how often you have

1 to have this TOP logger certification or recertifi-
2 cation?

3 A I think you have to be recertified -- they call it a
4 refresher course. It's just a one-day course. I
5 think that's every three years.

6 Q So, when you do the work that you do, you secure
7 the contract to harvest the timber or to cut the
8 timber off of tracts. Right?

9 A Right.

10 Q And then you make arrangements, then, to actually
11 get it cut, as far as with loggers.

12 A Yes.

13 Q Is there -- When you find a tract, then, do you also
14 have to find where that wood would be used, as far
15 as like what end user or who you're going to sell it
16 to? How does that work?

17 A We call the mill representative that we want to deal
18 with --

19 Q Okay.

20 A -- that we think will be best suited for us and them,
21 and they price the timber. And that's how it goes.
22 And, if we end up buying it, we notify them and
23 they do their necessary procedures to get the tract
24 set up.

25 Q And then you have -- These prices that you have,

1 do you pretty much know what those prices are
2 before you go to a landowner, as far as the going
3 rate on --

4 A Roughly.

5 Q Okay. Then, when you're dealing with the loggers --
6 and loggers would cut it out of the woods and
7 transport it. Is that right? They would do the
8 whole operation?

9 A (Affirmative response.) Correct.

10 Q And, I'm sorry. This is one of those deposition
11 rules that I didn't tell you. She's got to take down
12 everything. And so, head-nodding is hard for her
13 to get, so --

14 A I'm sorry.

15 Q That was my fault. I should've told you that. So,
16 if I'm looking for a "yes" or a "no," if you could give
17 one of those.

18 A Okay.

19 Q With the loggers, how does that conversation go
20 with the logger? If you've identified the tract of
21 land and then you've selected one or more loggers
22 to bid on it? I mean, how does that work?

23 A Most the times, -- You know, we have loggers that
24 cut for us and, according -- lot of times, whoever's
25 finishing up a tract first, you know, will be the first

1 one; or, whose located home base is closer to this
2 tract, and that sort of thing. And also, the size
3 dictates what logger will cut it. You know, some
4 loggers move a lot of wood, some of them don't.
5 So, all that goes into account.

6 Q Okay. And is it normally that you would have one
7 logger -- You identify a job, you call this logger,
8 you pretty much know if they're going to do it, or
9 not; or, I mean, is there some sort of interview that
10 goes along with it?

11 A We show them the tract and agree on a price.
12 Number one, they'll either say they'll cut it or they
13 won't, you know. And then we -- If they say yeah,
14 then we'll agree on the pricing.

15 Q And is there any sort of written contract that would
16 be signed with that logger?

17 A No.

18 Q Now, when you -- In this particular case, you were
19 dealing with Charles Levister, Levister Logging. Is
20 that right?

21 A Correct.

22 Q Now, was this the very first time that Myers Timber
23 had dealt with Charles Levister, Levister Logging?

24 A No.

25 Q So, y'all had used him before?

- 1 A Yes.
- 2 Q What tracts had he cut for you, if you recall?
- 3 A I can't remember the names.
- 4 Q Okay.
- 5 A I think one of them was a Lloyd Trust.
- 6 Q All right.
- 7 A That's the only one that comes to memory.
- 8 Q And what kind of job did he do for Myers Timber? I
- 9 mean, good, bad average, above average, below
- 10 average?
- 11 A It was average.
- 12 Q And now, when you all get a logger -- and there's
- 13 no written contract -- is there any sort of, I guess,
- 14 industry standard contract, like a set of terms that
- 15 everybody knows about? When they're asking you
- 16 to do it, these terms come with it, it's just an
- 17 unwritten rule? Is there anything like that?
- 18 A Not to my knowledge.
- 19 Q When you first dealt with Charles Levister, you said
- 20 there was no written contract. What were you
- 21 looking for in him to determine if he could actually
- 22 cut timber for you -- or, cut timber for Myers Timber?
- 23 Were there any minimum requirements or anything
- 24 that you checked out about him?
- 25 A In the business, you just -- When you've been in

1 Insurance certificates. Is that right?

2 A Correct.

3 Q When you secure a logger for the first time, is
4 there any -- do you do any background check or
5 any other-- Let me start again. You said that you
6 may call around and check them out, or you may've
7 heard other loggers talking about -- telling them
8 about the insurance. What else do you tell them, in
9 that initial interview, that conversation before
10 Myers Timber agrees to work with them?

11 A You know, if we agree on the logging rate for that
12 tract, you know, they supply us with the insurance
13 certificates. I mean, that's basically it. You know,
14 we tell them which mills, where the wood's going to
15 go, and the specs; and, that's basically it.

16 Q Okay.

17 A And we just arrange as to when we're going to pay
18 them, you know, whether they're going to get paid
19 on Friday, Monday, whatever.

20 Q Do you look at who their drivers are, their safety
21 records, their maintenance records, or anything
22 like that?

23 A No, sir.

24 Q Have you ever had to fire a logger for safety or
25 causing a problem?

1 A No, sir, not to my recollection.

2 MR. WILKERSON: I'm going to object to the
3 form of that question, as to "firing." When you're a
4 logger, I think, according to Mr. Myers' deposition,
5 they terminated the contract. And I assume that's
6 what you meant by "firing"?

7 MR. DOVE: Yes.

8 MR. WILKERSON: Okay, withdraw my objection.

9 BY MR. DOVE:

10 Q So, the loggers don't actually -- they're not
11 employees of Myers Timber.

12 A No, independent contractors. They can leave
13 anytime we want to and we can tell them, you know,
14 "We don't want y'all cutting anymore wood for us."
15 That's kind of, you know, --

16 Q Okay.

17 A -- the way it goes.

18 Q When you negotiate with a landowner or a trust
19 company -- a management company that's managing
20 the land, do you sign -- do you all -- does Myers --
21 I'm sorry -- does Myers Timber sign any sort of
22 contract with that owner?

23 A Yes.

24 Q Is it a standard contract or do the terms change
25 or --

1 Q So, the money wouldn't start coming in until the
2 cutting actually started.

3 A Right.

4 Q Do you know, on the Faulkenberry job -- Faulken-
5 berry tract, about how many acres that would've
6 been?

7 A Not exactly, no.

8 Q Do you know about how long you would've expected
9 it to take for a logger to do that work on that
10 property, the work that they needed to do?

11 A Probably a couple of weeks.

12 Q And, on this -- the Faulkenberry's -- Was this the
13 first time that Myers Timber had cut for the
14 Faulkenberry's -- say, the Faulkenberry tract? Is
15 there a Faulkenberry family? Were they the owners,
16 or do you know?

17 A Yes, they were the owners.

18 Q So, it was a single person or a husband and wife or --

19 A I can't remember that.

20 Q So, for the Faulkenberry family, was this the first --
21 Has Myers Timber cut any other timber for them,
22 other than this property -- the property they cut on
23 in March, 2007?

24 A Yes.

25 Q So, about how many and over what period of time?

1 Q Has it been in the last year?

2 A I don't know.

3 Q I want to move now to the logger. When we're
4 having the discussion about the logger on the tract,
5 like the Faulkenberry tract, what would happen --
6 physically, what would happen? Where would
7 people be, where would you go, where would the
8 conversation take place?

9 A I would show the logger the tract.

10 Q Okay.

11 A He would either say yea or nay, you know, I'll cut it
12 or I won't cut it. And then, we would agree on
13 price, the logging rates, what I would pay him to
14 cut it. And that's basically it. I'd hand him a map,
15 if I had one; mark out the boundaries, give him the
16 appropriate delivery cards and the mills that the
17 wood was going to go to.

18 Q Okay.

19 A And that's about it. And, if there was some kind of
20 special -- something they weren't aware of, as far
21 as a spec to a mill he was not aware of, I'd hand
22 him a spec sheet, how to cut it and how to process
23 the wood to deliver it to that mill.

24 Q You said that each -- Does each mill have a spec
25 sheet?

1 A Yes and no. A pulp mill -- I mean, there's really
2 no -- Just they pay everything, other than saw
3 timber; so, you don't -- you just basically get all
4 the limbs off of it and haul it to them.

5 Q But, like Chester Wood, --

6 A Yes, they -- Your saw mills would definitely have a
7 spec sheet as to -- and your plywood mills would
8 have a spec sheet as to how they want the logs
9 delivered.

10 Q So, Chester Wood, for example, would have a spec
11 sheet that it would print off and it would provide to
12 Myers? Or, how did that -- I mean, --

13 A Yes.

14 Q So, the spec sheet -- Is the spec sheet anything
15 that Myers would prepare from what Chester
16 Wood -- from information they had gotten from
17 Chester Wood?

18 A No, it's just a Chester Wood spec sheet, and they'll
19 just e-mail it to them or fax it to us, and we'd hand
20 it to whoever needed the information.

21 Q Now, the spec sheet, what would be some of the
22 general terms on the spec sheet and what -- I'm
23 sorry. What would be some of the general terms on
24 the spec sheet for Chester Wood, for example?

25 A Minimum and maximum butt diameter.

1 Q Okay.

2 A Minimum top diameter.

3 Q Okay.

4 A Length, minimum lengths, maximum lengths; and
5 the rest of it would just be concerning overall
6 quality of the tree, knots, crooks, scars, stuff like
7 that.

8 Q How about anything having to do with how it's
9 loaded or how it's stacked on the trailer, anything
10 like that having to do with how it's transported -- or
11 the transportation?

12 A Not that I'm aware of.

13 Q On the spec sheet, does it have any requirements
14 dealing with this insurance, the insurance that's got
15 to be possessed by a logger?

16 A Not that I know of.

17 Q There's another -- and I'm trying to remember. In
18 Kershaw, is there a -- what's the -- This wood, it's
19 my understanding, it was supposed to go to another
20 timber operation in -- somewhere around Kershaw, I
21 think.

22 A That'd be New South.

23 Q New South. And that's in Kershaw?

24 A Kershaw County.

25 Q Kershaw County. Okay. And what kind of timber

1 does New South take?

2 A Saw timber.

3 Q Do they have a spec sheet?

4 A Yes.

5 Q So, when you would be talking to the logger on the
6 tract and you'd show them the tract, give them
7 whatever map that you had, agree on a -- well,
8 you'd tell them how much you'd pay -- how much
9 that you would pay him per ton?

10 A Correct.

11 Q And then there's -- And then, you'd give this spec
12 sheet. Is that right?

13 A If they needed one.

14 Q Okay, I got you. Because, some of them were
15 already -- they'd already know what this operation
16 or that operation -- what New South would take
17 versus Chester Wood would take. Is that right?

18 A Correct.

19 Q Now, what's the standard -- or, is there a standard
20 about mileage, about -- How does the mileage work,
21 in those contracts with loggers?

22 A That's just the cut-and-haul rate. You have a
23 hauling, part of the logging operation; then you
24 have an in-woods cut-and-haul rate.

25 Q Help me understand that just a little bit more.

1 A All right. They get paid so much a ton to fell the
2 wood, which is cut the wood and load it on the
3 truck.

4 Q Okay.

5 A And then, the rest of the logging rate is just
6 mileage, trucking it to the mill one way.

7 Q In taking it to the mill, are there any directions
8 given about roads that they have to use, or any-
9 thing like that?

10 A No.

11 Q So, no requirement about certain types of roads
12 that the truck would have to use. I mean, they
13 could go on -- They could get there however they
14 wanted to go there.

15 A Correct.

16 Q Once they then deliver the wood to -- Like on this
17 Faulkenberry tract, once the truck would leave the
18 Faulkenberry tract and drive the load of logs to
19 Chester Wood, what would happen there? What
20 would be the process that a driver would experience
21 to go on the property and then come off the
22 property?

23 A He would pull up to the scale house, hand the scaler
24 the delivery card.

25 Q Okay.

1 A He would -- At that point, the truck would be
2 weighed, then he would go back and unload; and
3 then, he would come back out to the scale house
4 and the truck would be weighed again, and he would
5 be handed a scale ticket.

6 Q And then the scale -- And then what would he do
7 with the scale ticket?

8 A I don't really know. Some of them -- Some give it
9 to the owner, when they get back to the woods, or
10 whoever would be in charge of the tickets. I think
11 some drivers keep them till the end of the week.

12 Q So, the scale ticket would ultimately then come
13 from the driver back to somebody with Levister
14 Logging, in that example; or, would it come to
15 somebody with Myers Timber?

16 A Somebody with Levister Logging.

17 Q And then, what would -- Then Levister Logging
18 would then know how much it was supposed to be
19 getting paid, based on the tickets from its drivers.

20 A Basically, rough idea, yeah.

21 Q Okay. And how does the -- How does the pay then
22 go? How would the pay go for Levister Logging in a
23 job like this, like the Faulkenberry Tract? How
24 would they get -- I mean, how would they get paid?
25 When would they get paid? What would be the

1 mechanics of that?

2 A Whatever day he wanted to get paid -- like typically
3 a Friday or a Monday -- they would gather all their
4 tickets for that week and they would come to the
5 office. And sometimes we'd meet them in the woods
6 and we'd tally up, you know, the different products
7 that went to each mill and apply the rate that we
8 agreed on to those -- that mill delivery, --

9 Q Okay.

10 A -- and add it up and write them a check.

11 Q And they normally get paid at the end of a job or
12 during the job, or what?

13 A Basically, most of them are weekly.

14 Q All right. So, Charles Levister, then, in this Faulken-
15 berry tract, would've -- likely every week would've
16 gone through that same process with you or with
17 Paul, and would've been -- and Myers Timber
18 would've cut them a check every week that they
19 would work.

20 A Correct.

21 Q Are there any normal -- or any deductions from --
22 We have a contract price for the logger. We've got
23 the scale tickets. We know how much wood they've
24 hauled, the type, and so forth; and, here's how
25 much they're supposed to get. Are there any things

1 that would be deductions ever from the amounts of
2 the checks that they would get? -- that the logger
3 would get?

4 A Sometimes, like the mills deduct -- like a sawmill
5 would make a deduction on a ticket. And they
6 don't -- Lot of times, they don't appear on the scale
7 tickets right then; so, then we would get a sheet
8 faxed to our office several days later or a week later
9 and that may be a week behind. So, that may be a
10 deduction down there.

11 Q The deduction then would be for product that was
12 outside the specs?

13 A Correct, like a crook or a scar, or something like
14 that, on the wood.

15 Q And when such deduction -- And that would just be
16 a deduction in the amount that the logger was paid.

17 A Right.

18 Q On March 26, 2007, on this Faulkenberry tract,
19 what's your understanding of what happened on
20 that day, and who was there -- Well, first of all,
21 were you there?

22 A I can't remember if I was actually there that day, or
23 not.

24 Q Okay.

25 A I can't remember whether I was there. Very well

1 body we're dealing with in a contract has the
2 appropriate insurance.

3 Q Do you require written contracts now for loggers,
4 or not; still just --

5 A Still no written contract.

6 Q All right. Now, what's your -- You don't know if you
7 were -- if you went out to the site. What's your
8 understanding of what happened out there on the
9 site on the day this wreck took place, before the
10 wreck took place? Who was there and what
11 happened?

12 A Who was there, as far as --

13 Q On the tract -- On the Faulkenberry tract on that
14 day, on March 26, 2007, as the wood was being cut
15 off the property and was being loaded onto the
16 trucks, before this wreck happened, has anybody
17 told you anything about what happened on that day,
18 who was there, how all that went down?

19 A As far as just the regular day of logging and --

20 Q Yes, sir.

21 A The only thing I know that happened out of the
22 ordinary for that tract, a change that was made, is
23 that there was a load of wood redirected. That
24 tract was going -- The saw timber was going to New
25 South. And I can't remember whether I called and

1 redirected the load or whether Paul called. But, the
2 load involved in the accident was redirected to
3 Chester, because we couldn't get -- because New
4 South had some problems.

5 Q Anything else?

6 A That's it.

7 Q Do you know if -- Was there anybody -- any Myers
8 Timber employee on the site that morning before
9 the truck in question, that was involved in this
10 wreck, was loaded?

11 A I can't remember.

12 Q Have you ever -- You've been doing this work for --
13 since 1996?

14 A Yes, sir.

15 Q Have you ever -- Your lawyer made an objection to
16 the way I put that, and I'm trying to make sure I
17 get the words right. I had said "fired" a logger;
18 but, terminated the contract of a logger. Have you
19 ever terminated a contract with a logger for a
20 contract that they had with or through Myers
21 Timber?

22 A To my recollection, I have not.

23 Q Okay.

24 A Now, there may be one, but I can't remember one
25 offhand.

1 Q Have you ever made any observation about a truck
2 or any equipment -- that the equipment was sub-
3 standard; there was some safety issue with the
4 equipment?
5 A No, sir.
6 Q Have you ever required -- Instructed any logger to
7 have equipment actually repaired or -- and, being
8 specific, a trailer -- a tractor or traller that's
9 hauling logs, have you ever -- or, do you know if
10 anybody in Myers timber has ever directed a logger
11 to take care of some defect or problem to make the
12 vehicle safe?
13 A No, sir.
14 Q And Charles Levister continued -- After the day of
15 this wreck, Charles Levister, did he continue to
16 finish the Faulkenberry tract work?
17 A Yes, sir.
18 Q And I've asked you this, and I can't remember the
19 answer. Do you know if he did anymore work for
20 Myers Timber?
21 A Yes, he did.
22 Q And about -- What tract was it on, do you recall? --
23 or tracts?
24 A He cut a few more tracts after that. The only one
25 I can remember the name of it would be the

1 to us, you know, for a safe job.

2 Q And why is it important?

3 A Just safety is important in any -- In my opinion, in
4 any aspect of any business.

5 Q And if a trucker -- If you come to know that a
6 trucker's not running a safe truck -- that his tires
7 are bald, no brakes on the truck or trailer, or
8 insufficient brakes, is Myers going to let them haul
9 their timber?

10 A I would hope not.

11 Q Why not?

12 A You know, that's not safe, you know.

13 Q Does Myers have any type of umbrella policy that
14 would cover the loggers?

15 A I do not know.

16 Q Was Levister working basically on a cut-and-haul
17 pay scale?

18 A Yes.

19 Q Do you know how much profit Myers earned off the
20 Faulkenberry tract?

21 A I don't, offhand, no.

22 Q Would that be in the file?

23 A Yeah.

24 Q Do you remember what the estimated profit was off
25 that Faulkenberry tract?

1 A No, sir, I do not.

2 Q Has Myers ever checked the safety record of any
3 loggers that they've hired in the past?

4 A To my knowledge, no.

5 Q And you didn't check the safety -- Or, Myers didn't
6 check the safety record of Charles Levister or
7 George Rogers.

8 A No, sir.

9 Q Why not?

10 A That's -- I don't know of any safety records to
11 check, to my knowledge. I mean, that's just -- It's
12 just one reason or another we don't do that.

13 Q Does Myers Timber carry workers' compensation
14 coverage?

15 A Yes.

16 Q Has Myers Timber ever been brought in through the
17 South Carolina Workers' Compensation Commission
18 as an employer, when a logger was injured?

19 A Not to my knowledge.

20 Q The contract that Myers had with Faulkenberry, it
21 included the hauling away of this timber. In other
22 words, you were purchasing timber --

23 A Right.

24 Q -- and under the contract, a written contract, Myers
25 had to haul it away.

- 1 A I'm not sure whether it said Myers had to haul it
2 away. It was just we were buying the timber to be
3 cut.
- 4 Q And didn't it include a timeframe for when the timber
5 would be removed?
- 6 A Yes, sir.
- 7 Q And if the timber was not removed, who would the
8 landowner be looking to?
- 9 A Myers.
- 10 Q The contract wasn't with Levister and Faulkenberry.
11 Is that correct?
- 12 A That's correct.
- 13 Q The contract was between Faulkenberry and Myers.
- 14 A That's correct.
- 15 Q And the contract included the hauling away of this
16 timber by a certain date.
- 17 A I think the term we use is "removal."
- 18 Q So, it required Myers to remove the timber by a
19 certain date.
- 20 A That's correct.
- 21 Q Myers doesn't own any trucks.
- 22 A That's correct.
- 23 Q Do you have your CDL license?
- 24 A No, sir.
- 25 Q Have you ever driven a logging truck?

1 A No, sir.

2 Q But Myers, as part of your contract with Faulken-
3 berry, would require to haul or to move this timber
4 off of the tract.

5 A Correct.

6 Q And you do that by hiring loggers.

7 A Independent contract loggers, yeah.

8 Q And, without hiring those independent loggers,
9 Myers would not be able to fulfill the terms of their
10 contract with the Faulkenberrys.

11 A That's correct.

12 Q And hauling timber is an essential function --- or
13 removing timber is an essential function of that
14 contract, or essential part of the contract.

15 A Correct.

16 Q And buying timber, removing timber and also
17 getting timber to the mill is an essential function
18 of Myers Timber. Is that correct?

19 A Uh-huh (affirmative).

20 Q We need a verbal response.

21 A Yes.

22 Q And that's because, if you don't cut it, remove it
23 and get it to the mill, Myers Timber doesn't make
24 a profit.

25 A That's correct.

1 Q Did you all tell -- Did Myers tell Levister where to
2 set up on the Faulkenberry tract?

3 A I can't remember.

4 Q And you would sometimes talk with the owner about
5 where the loggers would be going into and out of
6 the property?

7 A Yeah. If they had more than one access road going
8 in, yeah, we would talk to them about which one
9 they would, you know, prefer us to use.

10 Q Was that the case for the Faulkenberry tract?

11 A I can't remember.

12 Q Do you remember what Levister was told, with
13 regard to the Faulkenberry tract?

14 A No, sir.

15 Q If there was a problem with how the loggers were
16 cutting the timber, leaving the property, if they
17 were roughing up the property, whose responsibility
18 would it be to deal with the landowner and make
19 sure that that was corrected?

20 A Somebody from Myers Timber.

21 Q So, would you agree that Myers timber had the right
22 to direct the loggers about how to cut that timber
23 and leave the property?

24 A To a certain degree, yeah.

25 Q And to what degree would that be?

1 A I couldn't tell -- Here's one example. I couldn't tell
2 them exactly how to drive the cutter and what side
3 to cut the tree on. But, if they went through there
4 leaving stumps that high, you know, then I would
5 say something, because they're wasting a part of
6 the wood --

7 Q Breach of Myers --

8 A Yeah. I mean, that's just not a standard practice
9 and it doesn't look good, and you're -- You know, if
10 you cut the whole tract, leaving a stump three foot
11 high, that's a lot of valuable wood that's left in the
12 woods that can never be used for anything. That --
13 You know, we would instruct them to correct that.
14 But, other than that, that's a good example of what
15 kind of instructions we may give.

16 Q What if they were rutting up the property?

17 A Then we would -- They would need to stop, because
18 that's -- It's not a law, but that goes under the best
19 management practices for South Carolina, you know,
20 rutting. And we would, you know, get them to stop
21 and, you know, move to another tract, more than
22 likely.

23 Q What if they were cutting within 40 feet of a stream?

24 A We would, of course, let them know, you know, we
25 can't be doing that. And most of the time, we will

1 flag buffers so they know where to stop.

2 Q Did y'all find any buffers on this Faulkenberry tract?

3 A I can't remember.

4 Q Was that general practice that Myers would go out --

5 A Yeah.

6 Q -- and y'all would actually flag the property and tell
7 the loggers where they should cut?

8 A Correct.

9 Q And you would tell the loggers -- give them the
10 specs or tell them where they were taking it to, so
11 they would know the specs.

12 A Correct.

13 Q And then you would instruct them where to deliver it
14 to.

15 A Correct.

16 Q And then the mill would give them a ticket. And
17 then how would the money come back? Would the
18 mill pay Myers and then Myers would pay the logger?

19 A Correct. The mill pays us a delivered rate for the
20 product, and then we pay the logger and the
21 landowner.

22 Q And would Myers actually pay the logger before you
23 got paid for the mill, if you paid them every week;
24 or, would it wait to get the money from the mill?

25 A Some cases it may be like that, and then other

1 A As far as your butt end and your top end diameters,
2 they're pretty much the same. But, New South is a
3 tree length mill and Chester Wood takes it in
4 measured lengths.

5 Q So, if they were loading up at New South and had
6 already started loading, but were redirected to
7 Chester Wood, would the wood have to be re-cut or
8 re-measured?

9 A There's a good chance of that, yeah.

10 Q And did that occur that day?

11 A I'm sure it did. I do not know for sure, but that --

12 more than likely, there's a very slim chance that
13 the wood they already had loaded to go to New
14 South would've met inside the specs of Chester.

15 Q So, what would they have had to have done -- What
16 would've had to take place in order for the wood
17 that they had already loaded that day to meet the
18 specs of Chester, when they cut it initially for New
19 South?

20 A I'm sure they would've had to take the trees off the
21 truck, if there were any already loaded and, you
22 know, make sure the butt diameters were correct
23 and the length of the trees were to Chester's specs
24 and, you know, ample top end.

25 Q And would someone from Myers have instructed

1 Q If you had been out there on the site and you saw a
2 truck with bald tires and a trailer with bald tires, or
3 had some knowledge that there was no brakes,
4 would you have allowed that truck to leave off that
5 tract?

6 A No, I wouldn't, if I would have known.

7 Q Why not?

8 A Well, I mean, that's dangerous. That's not a --
9 That's not good for anybody.

10 Q After the Faulkenberry tract, and during the time
11 that Levister had -- was working these other tracts
12 that you said he worked, did someone check his
13 trucks and trailers?

14 A No.

15 Q At that point, though, you had some knowledge that
16 the truck and trailer didn't have adequate safety
17 equipment and brakes.

18 A I did not know that for sure, no.

19 Q When you say "for sure," what do you mean?

20 A Well, I mean, you just hear -- I never saw an
21 official documents saying that the brakes were
22 insufficient or -- you know, I didn't --

23 Q You heard some rumor about that?

24 A I heard that and, you know, you hear all kinds of
25 things, you know; but, I had no proof of anything.

1 Q Do you remember what the cut-and-haul date was
2 for Levister on the Faulkenberry tract?

3 A Vaguely, but I don't remember the miles. It
4 wouldn't have been a minimum haul to New South,
5 and that would've been -- I think back then we were
6 paying 10 cents a mile and \$10 a ton to put it on a
7 truck; so, basically, our minimum goes out to 40
8 miles. That'd be \$14 to New South.

9 Q Did you have to renegotiate that with Levister to
10 take to Chester Wood?

11 A If it would've been farther than 40 miles. But, it
12 would've been no negotiation. It would've just went
13 up, because of the miles.

14 Q And to the best of your recollection, Levister was
15 paid every week when he was out on that tract.

16 A Best I can remember.

17 Q Do you know how long he'd been out on that tract,
18 at the time of this wreck?

19 A I can't remember.

20 Q Could you pull a logger off of one tract and put him
21 on another?

22 A Yeah, if need be.

23 Q And Myers would flag the buffer zones and instruct
24 the loggers where to cut.

25 A Correct.

1 pretty much daily on deducts.

2 Q And if you see that a logger that's removing your
3 timber is consistently running overloaded, what
4 would you do?

5 A We really don't do anything. But the mills notify,
6 you know, the loggers, you know, when they come
7 in. And some of them now are actually doing some
8 kind of fining system.

9 Q As Myers Timber, if you get tickets consistently on
10 a tract and you see that that logger is running
11 overloaded every load, have you ever gone to a
12 logger and said, "Hey, you're running overloaded.
13 You need to watch it."?

14 A Not as I recall.

15 Q Would it be a safe practice to do that?

16 A It would be a safe practice to do that.

17 Q And why doesn't Myers do that?

18 A I do not know.

19 Q You said you get e-mails from these mills.

20 A Yeah.

21 Q What kind of e-mails do you get from the mills?

22 A They e-mail us delivery cards. They e-mail us for
23 like holiday schedule, like when they're open, their
24 hours of operation. They'll e-mail us deducts from
25 loads.

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Carlton Quinton as Guardian for
Timothy Quinton, a Minor under the
Age of Eighteen,

Plaintiff,

vs.

Myers Timber Company, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

Case Numbers: 10-CP-12-00137
10-CP-12-00136
10-CP-12-00135
10-CP-12-00134
10-CP-12-00133

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Alice Quinton and Carlton Quinton,

Plaintiffs,

Vs.

Myers Timber Company, Inc.,

Defendant.

DEPOSITION OF FRED MYERS

ROCK HILL, SOUTH CAROLINA

NOVEMBER 1, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Carlton Quinton as Personal
Representative of the Estate of
Hannah Nicole Quinton, deceased,

Plaintiff,

Vs.

Myers Timber Company, Inc.,

Defendant.

REPORTER: Robbie E. Moskau, CCR

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1 Q And is that -- Did you form Myers Timber, at that
2 point?

3 A I did.

4 Q And that's been the sole entity, Myers Timber?

5 A Myers Timber, Incorporated. Yes.

6 Q All right. And when you set up Myers Timber, what
7 venture did it start in; and has that changed any?

8 A It --

9 Q What does the business to do?

10 A It's a timber dealership.

11 Q Okay.

12 A You have -- Dealerships are nontransferable. Mills
13 have to give you a contract and supply them with
14 wood.

15 Q Okay.

16 A It's not a saleable entity. In other words, if you
17 said, "I want to buy Myers Timber Company," my
18 dealership cannot be sold.

19 Q Okay.

20 A They would have to give Dale Dove the dealership.
21 In other words, you can't buy my dealership. You
22 can buy my company, Myers Timber Company, --

23 Q Okay.

24 A -- but there's no guarantee that the mill will give
25 you a dealership.

1 Q So, how many different mills do you work -- have
2 dealerships with?

3 A Bowater, Chester Wood Supply, Westvaco, Union
4 Camp, Domtar, New South Industries, Beal Lumber
5 Company, Almond Forest Products. That's all I can
6 think of.

7 Q And so, a dealership, then, is something that these
8 wood -- people that need wood delivered to them
9 then would give you the ability to secure wood on
10 their behalf or supply them wood; or how does that
11 work?

12 A You're a supplier to them.

13 Q Okay.

14 A Of the raw material.

15 Q So, you don't go out -- Like for Bowater, for
16 example, you don't go out and secure wood -- the
17 right to cut timber off somebody's land or purchase
18 timber off somebody's land or purchase the land
19 with the timber on it, you don't do any of that for
20 Bowater.

21 A No. It would be strictly for Myers Timber.

22 Q And, under the dealership, do you -- Now, they work
23 with various dealers. They have a whole host of
24 dealers.

25 A Correct.

1 so, I have to remember to talk slower. And, when-
2 ever you would say "yes" or "no," say "yes" or "no,"
3 instead of "uh-huh" and "huh-uh."

4 A Okay.

5 Q And so, you just did an "uh-huh," and I did, too.
6 I'm sorry. Okay.

7 Now, the tract numbers, do they have to --
8 The tract numbers, that's something that you would
9 give; or, does the dealership do anything?

10 A Excuse me?

11 Q Does Chester Wood care anything about the tract
12 numbers? They don't assign the tract numbers. Let
13 me just say that. -- or would they?

14 A Well, there's different procedures.

15 Q Tell me how that works, about assigning the tract
16 numbers.

17 A Well, you have what's called gate wood, --

18 Q Okay.

19 A -- that we can ship wood to them under what's
20 called a gate wood contract.

21 Q Okay.

22 A That means exactly what it says. There's no special
23 pricing or special entity there.

24 Q Now, with a gate wood contract, that could come
25 from anywhere, --

- 1 A Correct.
- 2 Q -- any tract.
- 3 A Correct.
- 4 Q So, it's not tract related.
- 5 A That is correct.
- 6 Q And then what other type contract would it be?
- 7 A If I was going to use Chester Wood, per se, for a
- 8 specific tract, they have to come up to that tract
- 9 and look at the timber.
- 10 Q Okay.
- 11 A They price it and then they -- Some of them use a
- 12 number. Some of them use a name.
- 13 Q Okay.
- 14 A And so, either -- Whichever bill, there would be a
- 15 number assigned to that tract or a name assigned
- 16 to that tract.
- 17 Q Okay, tract -- Okay. And so, on the tracts, then,
- 18 it takes the -- The Chester Wood, for example, it
- 19 would take them to come and meet with you or
- 20 identify that tract; and you all agree on a price for
- 21 lumber that would come from that tract.
- 22 A Yes.
- 23 Q And that would be different and probably higher,
- 24 generally, than the wood that would come -- that
- 25 would be gate wood.

1 A Correct.

2 Q Okay. Tract wood -- or, I'll just call it tract
3 contracts and then gate wood contracts. Any other
4 type of agreements that you have?

5 A No.

6 Q The wood being hauled on the day of this wreck --
7 And you're familiar with the wreck I'm talking
8 about?

9 A Limited, yeah.

10 Q Okay. That was Monday, March 26, 2007. And that
11 wood, it's my understanding, was going to Chester
12 Wood. Is that your understanding?

13 A That particular load, yeah.

14 Q And was that gate wood or was that tract -- a tract?

15 A To be honest, I don't know.

16 Q All right. Now, going back, then, so you started
17 Myers Timber, Incorporated, in 1983. Now, who are
18 the shareholders of that?

19 A Well, myself and my wife.

20 Q And is it 50/50, or is there a different percentage of
21 ownership?

22 A At that time, it was 50/50.

23 Q And how about now? Are there any additional -- Has
24 the ownership changed?

25 A The ownership changed to 60/40 --

1 Q Okay.

2 A -- between myself and David M. Stines.

3 Q And so, your wife is no longer an owner in Myers
4 Timber. If I say Myers Timber, I mean Myers
5 Timber Company, Incorporated.

6 A Right. And, at the time of the accident, it was
7 60/40. Mitch Stines owned 40 percent, I owned 60
8 percent.

9 Q So, your wife, at the time of the accident and
10 through today, your wife hasn't had any ownership
11 interest in this.

12 A She does today.

13 Q Okay. And just so I can full-circle in my head,
14 what's her ownership interest today?

15 A It would be 40 percent.

16 Q So, is Mr. Stines still an owner today?

17 A He is not.

18 Q Okay. So, did Mr. Stines -- When did he come into
19 owning stock, about?

20 A Golly. To give you an honest answer, it would be --
21 I gave him 10 percent a year up to 40 percent. And
22 I don't know the exact date that he started.

23 Q And so, was he an employee, then, that you were
24 trying to keep him on?

25 A It was a form of compensation.

1 a million dollars on our automobile policy.

2 Q Are the mills -- Do they show up as any sort of
3 additional insured, or anything, under those
4 policies?

5 A No.

6 Q Do you have to give them proof of that insurance?

7 A yes.

8 Q Is that every year or --

9 A Uh-huh (affirmative).

10 Q Every year?

11 A Annually.

12 Q Okay. And that would be true for Chester Wood.

13 Chester Wood would be such a mill that would
14 require that.

15 A Correct.

16 Q So, the top logger certification and then the annual
17 recertification -- no, the every-three-years recerti-
18 fication.

19 A Correct.

20 Q So, now, how many -- You used the phrase a minute
21 ago "every logger has to have that." Tell me what a
22 logger would be; somebody that would have to have
23 this class.

24 A An independent contractor.

25 Q That does what?

- 1 A Did logs.
- 2 Q So, Myers Timber, does it have its own loggers?
- 3 A No.
- 4 Q Has it ever had its own loggers?
- 5 A No.
- 6 Q In Myers Timber, are you the only -- Well, how
- 7 many employees does it have?
- 8 A We have one secretary and three timber buyers.
- 9 Q And the timber buyers are all employees.
- 10 A Correct.
- 11 Q So, Myers Timber has -- and I may've just asked
- 12 you this; I'm sorry. Has it ever employed, as its
- 13 employees, loggers?
- 14 A No.
- 15 Q What equipment -- What sort of equipment, as far
- 16 as office -- As far as logging equipment, does Myers
- 17 Timber own any logging equipment?
- 18 A No.
- 19 Q Ever owned any logging equipment?
- 20 A Excuse me?
- 21 Q Has it ever owned any logging equipment?
- 22 A No.
- 23 Q Has Myers Timber ever owned any tractor trailers or
- 24 trailers used to haul logging equipment?
- 25 A No.

1 Q So, the loggers, then, are the people that would cut
2 the wood, harvest the wood off the tracts.

3 A Right. They're independent contractors that will
4 harvest the wood from the tracts that we purchase.

5 Q And do the loggers normally have their own
6 transportation -- their own trucks to deliver the
7 product to the mills?

8 A Yes.

9 Q Are there situations where loggers only do one and
10 not the other?

11 A If a logger does not have their own truck, they
12 would have to use contract trucking.

13 Q So, the logger, then, may enter into a contract and
14 get somebody to haul the wood out of the --

15 A Correct.

16 Q -- off the tract. Okay. So, since 1983, any -- how
17 many loggers has Myers Timber used? I mean, I
18 have no clue as to what that means. I mean, does
19 that mean, like "oh, I've only had three; or, there's
20 no way I can tell you"?

21 A Well, they're all independent contractors and, I
22 mean, they can -- they could cut for us for six
23 weeks, six months; then, they're liable to go cut for
24 you.

25 Q So, I mean, you would've had many, many -- over

1 20 different loggers, maybe?

2 A Probably 20, 25.

3 Q And at any given time, would you use -- or, Myers
4 would use multiple loggers at pretty much any
5 given time?

6 A Correct.

7 Q Are those -- Let me ask -- Do you -- Myers -- I'm
8 sorry. I keep saying "you." I mean Myers Timber
9 Company, Incorporated. But, Myers Timber, does
10 it work with tracts of wood in -- What states does it
11 work in?

12 A South Carolina.

13 Q Exclusive.

14 A Exclusive.

15 Q And so -- Now, how -- all around the state or
16 maybe in a particular region of the state?

17 A Probably within, let's say, a hundred mile radius of
18 Camden.

19 Q So, today, for instance, how many loggers would
20 you be -- or, would Myers be employing today,
21 about?

22 A We don't employ --

23 Q I mean, hiring today; independent contractors
24 hiring today.

25 A Probably six or seven.

1 Q Now, is that pretty consistent, or has the economy
2 has any effect on that number?

3 A That would be fairly consistent.

4 Q When you would -- When Myers would contract with
5 these loggers, is there some sort of written contract
6 that it uses?

7 A No.

8 Q Then what are the terms -- What terms, then, --
9 So, the contract terms, then, would be all verbal
10 contract terms.

11 A Correct.

12 Q So, what are the terms that would be negotiated
13 with the logger, when you're looking to hire or
14 employ them?

15 A Well, actually, what you do is you take the logger
16 to the tract of timber and you show them the tract
17 of timber; and you explain to them the various
18 types of wood that they're going to find within that
19 tract of timber and mills that the wood is going to
20 be delivered to. And then you price the wood,
21 hauling of the wood and the cutting of the wood
22 based on mileage. And it's -- You pay them so
23 much to harvest it and bring it to the deck in so
24 much a loaded mile to the mill.

25 Q Okay.

1 A And they can accept it or reject it.

2 Q Now, -- So, is it normally the way the thing -- the
3 agreements normally happen is a tract is identified
4 and then a logger is -- that Myers contracts with a
5 logger, then, to harvest the wood off that tract and
6 do the work necessary to deliver the wood to the
7 mills?

8 A Correct.

9 Q Now, normally, is that just one logger that -- or is it
10 almost a bidding process with the loggers?

11 A No, it's not a bidding process.

12 Q So, I mean, is it -- I mean, how do you identify that
13 logger and the -- do you take more than one logger
14 out to the field to do that?

15 A If we show a logger a tract of timber and, for some
16 reason, they do not want to cut this tract of timber,
17 then, you know, we'll look to find another one.

18 Q Okay. How was the price set? You said there's a
19 price for harvesting and bring it to the deck, and
20 then there's a price for taking it from there to the
21 mills, --

22 A Correct.

23 Q -- is that right? Are those things called anything
24 special?

25 A It's called a cut and haul rate.

1 Q So, the cut rate and the haul rate.

2 A Right.

3 Q All right. So, how is that cut and haul rate set?

4 Who sets that rate?

5 A Well, actually, the wood dealer would set the rate,
6 based on the amount of money paid by the mill and
7 the money paid to the landowners.

8 Q So, the wood dealer would be Myers, in most
9 instances.

10 A Correct.

11 Q Is there any sort of ratio, like rule of thumb, about
12 how that cut and haul rate would be set? You take
13 the -- what the mill is going to pay and what you
14 pay the landowner; any sort of percentage or ratio
15 that's normally there?

16 A Well, it's not a -- I don't know that you could work
17 it off a percentage, but it's pretty much a standard
18 rate throughout the industry. Some tracts would
19 require -- The rougher tracts would require a higher
20 cut and haul.

21 Q I got you.

22 A Each tract of wood stands on its own.

23 Q Okay.

24 A So, if it's level and flat, it's sitting beside a paved
25 road, it's going to carry one cut and haul rate. If

1 it's a mile and a half back in the woods and you got
2 to build roads to it, then it's going to carry another
3 cut and haul rate.

4 Q Wow, that can get complicated.

5 A Well, yeah.

6 Q Okay. Now, the mills, do they -- Is that part of
7 what you and -- or whoever's the dealer -- but
8 Myers Timber, is that something that you, on behalf
9 of Myers Timber and the mill representative kind of
10 work out? I mean, that you all --

11 A Yeah.

12 Q -- In coming up with a price?

13 A To some degree. And what you end up, is you end
14 up with a lump-sum total delivered to the mill. And
15 out of that comes stumpage to the landowner and
16 the cut and haul rate.

17 Q And when you say "stumpage," is that just how much
18 they're getting per tree that's cut or --

19 A Per ton.

20 Q Per ton. So, it's really not a negotiation -- There's
21 not much -- Is there any negotiation with the logger?
22 Is it pretty much take it or leave it or --

23 A Well, it's not a lot of negotiation, no, at all, I mean,
24 to be honest.

25 Q So, it's pretty much here it is, here's how much --

1 this is cut and haul rate, and the timing of it, and
2 do you want the job, or not.

3 A Basically.

4 Q Other than -- Well, I want to try to make sure I've
5 covered all with the certification. Is there any
6 other classes or certifications, or anything, that
7 you've had outside this top logger --

8 A No.

9 Q Now, in the top logger course, do they cover the
10 processes involved in cutting and hauling?

11 A They don't get involved too much in that.

12 Q I mean, but are there any parts of it that would
13 explain about how to load a truck?

14 A No.

15 Q Any parts of that that would discuss safety in the
16 operation of loading harvested wood onto a tractor
17 trailer?

18 A No.

19 Q Any parts of that course that would deal with the
20 safety checklist, road worthiness of tractors and
21 trailers that would haul this wood to the mills?

22 A Not that I can recall.

23 Q All right. Have you ever had any courses or any
24 education on any of the operations dealing with the
25 loading of harvested timber onto a tractor-trailer?

1 A No.

2 Q And how about any sort of courses or training on
3 the safety of -- and the road-worthiness of a
4 tractor-trailer that's going to be loaded with wood
5 in a field and sent to a mill?

6 A No.

7 Q In hiring a logger -- So, any logger that you would
8 contract with -- or, that Myers Timber would
9 contract with, they would have to have it -- be
10 current on this top logging. Is that correct?

11 A Correct.

12 Q And, in this case, in the issue at hand, the tract and
13 the wood that was being hauled was being hauled by
14 Charles Levister's company? Is that correct?

15 A Correct.

16 Q And Charles Levister was one of those loggers that
17 had the top logger certification?

18 A Either he or someone on the job has to have it.

19 Q Okay, I got it. And so, when you said every logger,
20 it's the logging company; not meaning every
21 individual in that.

22 A No.

23 Q Okay.

24 A Somebody on that job.

25 Q Okay. Do you know who, on the Charles Levister --

1 A I can't recall.

2 Q So, is there anything in writing -- any sort of
3 documents, or anything, that you require to be seen
4 by or provided from the loggers to you before you
5 would hire them?

6 A I'm sure we saw a top logger certification.

7 Q Okay.

8 A That's one of the things we do have to have.

9 Q Okay.

10 A There's also a list on a website where you can look
11 it up with the South Carolina Forestry Commission
12 and verify it.

13 Q And that's the top logger certification.

14 A That is correct.

15 Q Anything else that would be required that the logger
16 would have to provide?

17 A No, sir.

18 Q Does the logger have to provide -- And the logger
19 would have equipment to get the -- to clear and to
20 harvest the trees and de-limb them and bring them
21 up to the deck and load them onto the trucks for
22 delivering to the mill. They would be expected to
23 have or secure all that equipment.

24 A That is correct.

25 Q And most loggers, then, would also have the tractor-

1 trailer rigs necessary to deliver the product from the
2 deck to the mills.

3 A Correct.

4 Q And does Myers require any certificates or evidence
5 of insurance from loggers?

6 A We ask the loggers if they have workmen's comp,
7 because that is their responsibility --

8 Q Okay.

9 A -- for their people.

10 Q Any other type insurance?

11 A We assume they have the correct insurance on their
12 trucks.

13 Q Now, do you know what the insurance -- I mean,
14 when you said "correct insurance," what would that
15 include? What would be correct insurance that you'd
16 be looking for that they should have?

17 A It makes no difference to us. I mean, seriously.

18 Q Now, tell me what you mean by "It makes no
19 difference."

20 A Well, in other words, I can't make them -- Because
21 they're independent contractors, I don't have a right
22 to make them do anything.

23 Q So, when you used the phrase of "correct insurance,"
24 what should they have? What insurance
25 would be correct?

1 A It's still a group decision. I mean, everybody's in
2 the field all the time, so --

3 Q Okay.

4 A -- you know, and we're all in different areas.

5 Q And is that because they're in the field, they have
6 experience with a logger that you may not have,
7 because you haven't been around that logger.

8 A That is correct.

9 Q Okay.

10 A Or they may -- If one of them's operating in Rich-
11 land and Fairfield County -- and I primarily operate
12 to the east, mainly, you know; and, they may know
13 something that I don't know.

14 Q Okay, I got you. Now, would any of those -- Is it
15 anybody's responsibility, within Myers Timber, to
16 verify the workers' compensation insurance that a
17 logger would have to have?

18 A We have asked for certificates of insurance before.

19 Q Okay.

20 A But, we don't ask them on -- every logger.

21 Q And is there a particular person in the company,
22 Myers Timber, that asks for that certificate of
23 insurance?

24 A Not really.

25 Q Would that primarily be you or could it just as easily

1 be one of the buyers?

2 A It could be one of the buyers.

3 Q And, as far as on the other type of insurance,
4 insurance covering the equipment and what the
5 loggers do, as far as liability type insurance, would
6 there be anybody in Myers Timber that would
7 customarily be the one to ask for a certificate of
8 insurance?

9 A No.

10 Q And you don't know what the correct amount of
11 insurance that they would need to have on their
12 tractor-trailer rigs.

13 A I do not.

14 Q I'm sorry, my brain just locked up. I've got to
15 unlock it here. Okay. I was asking about other
16 requirements. So, you could look on the South
17 Carolina Forestry Commission website and determine
18 whether or not they were --

19 A Top loggers.

20 Q -- certified top loggers, and somebody within the
21 company would inquire or validate that there was
22 workers' compensation, particularly for a new logger,
23 if it was a logger that was new to you?

24 A Yeah, uh-huh (affirmative).

25 Q And is there anything else that the loggers would

1 Q Now, on the day that this thing -- that this wreck
2 occurred, on March 26, 2007, were you -- had you
3 been to the field or inside -- in the woods with
4 Charles Levister?

5 A No.

6 Q Were you on the site where the loading was taking
7 place?

8 A No.

9 Q Was there anybody, on behalf of Myers Trucking, on
10 the site where the -- at the deck site that day?

11 A It's not Myers Trucking.

12 Q I'm sorry, Myers Timber. Thank you. I got too
13 many things going on in my head.

14 A It was Mitch Stines.

15 Q And his name is Mitch?

16 A Yeah. David M. Stines.

17 Q Spell his last name.

18 A S-T-I-N-E-S.

19 Q And Mitch Stines -- And where does he live?

20 A In Camden.

21 Q Do you know a street?

22 A I don't know.

23 Q And now, Mitch is a -- Is Mitch is a buyer for Myers
24 Timber?

25 A Correct.

1 Q And was he -- On the day of this -- On March the
2 26th, 2007, he was a 40 percent stock owner?

3 A Correct.

4 Q But today he owns none.

5 A Correct.

6 Q So, Mitch Stines, then, was on -- was with Charles
7 Levister on March the 26th, 2007, on around the
8 deck area -- Am I saying that right? The loading
9 area?

10 A I assume. I wasn't there.

11 Q But the deck area is a loading area.

12 A Correct.

13 Q And is it your understanding that Mitch Stines was
14 there when the loading was taking place?

15 A I know that Mitch went to the jobsite and clarified
16 the boundary lines --

17 Q Okay.

18 A -- of the tract.

19 Q Okay. And that would've happened on that Monday
20 sometime.

21 A That was my understanding.

22 Q Now, that would've been to clarify the boundary
23 lines. Okay. Now, who would've been -- Who was
24 the person for Myers Timber that went to the field
25 with somebody for Charles Levister, when the

1 contract was entered into?

2 A I would've probably been Paul Davis and Mitch.

3 Q Now, who is Paul Davis?

4 A He's a timber buyer for Myers Timber.

5 Q Now, why would he have had both of them?

6 A I think Paul was the one that bought the timber.

7 Q Okay. And why would it have taken both of them to
8 do it? One of them had different experiences or --

9 A Yeah, somewhat; and also, sometimes they were
10 riding together.

11 Q Okay. Now, are they assigned generally different
12 territories? Each buyer has a territory?

13 A Yes and no. I mean, you know, you work general
14 areas, but you may have -- If you worked in the
15 east, you may have a contact in Fairfield County,
16 too.

17 Q I got you. It's all -- So much of it is personal
18 relationships --

19 A That is correct.

20 Q -- and how you treat people.

21 A That's right.

22 Q Now, how do you know that -- How do you come by
23 your knowledge that you believe that Mitch was
24 there on that -- on March 27th, 2007?

25 A Let's see, because -- To be honest, he told me he

1 was.

2 Q Now, would that have -- When would he have told
3 you relative to that day; on that day or sometime --
4 days after, weeks after, months after?

5 A No, it would've been that day.

6 Q And why did that even come up in conversation?
7 How did that conversation start?

8 A I think, because New South had actually broken
9 down and something went wrong at the mill, and we
10 had to ship a load of wood to another mill.

11 Q So, tell me how you learned that.

12 A From Mitch.

13 Q So, did he call you from the field?

14 A I would say -- Yes, I would say he did.

15 Q But, I mean, did you talk to him on the phone or in
16 person?

17 A On the phone.

18 Q So, he called you from the field. Now, New South,
19 is that Kershaw?

20 A That's in Camden.

21 Q That's Camden. Okay. Now, New South is -- I
22 mean, that's a mill or --

23 A It is. It's a sawmill.

24 Q Okay. And so the wood -- This tract that they
25 were -- that Charles Levister was the logger on,

1 did that truck have a name or a number?

2 A It would have a name. I can't remember what the
3 name is.

4 Q All right. Where was it? What city was it in?

5 A It would've been south of Kershaw, and I don't know
6 whether it would've been in Lancaster County or
7 Kershaw County. It would've been pretty close on
8 the line.

9 Q Just for this, I'm just going to call it Kershaw tract.
10 Is that okay?

11 A That's fine.

12 Q So, the Kershaw tract, then, was supposed to be --
13 the wood was supposed to go to New South.

14 A Correct.

15 Q And what was special about -- Was there anything
16 that was special about the wood, why it was going
17 to New South?

18 A It was basically the closest mill.

19 Q Now, were -- So, this was going to be gate wood.
20 Would this have been gate wood, or would this have
21 been tract?

22 A It would've been tract wood to New South.

23 Q All right. And then, after talking with Mitch on the
24 phone, then the decision -- Mitch told you that New
25 South had broken down?

1 A Correct.

2 Q And then what happened?

3 A I think he called Chester Wood Supply to see if they
4 would take a load of wood, since this particular tract
5 was not booked with them.

6 Q And had he done that before he talked to you?

7 A Yes.

8 Q Did y'all just have one conversation about this New
9 South broke down and it's going to Chester Wood,
10 or were there more than one?

11 A Just one.

12 Q So, before he called you, he'd already checked with
13 Chester Wood to see if he could go there.

14 A Correct.

15 Q And so, he told you it had broken down. He told
16 you that Chester Wood said that they would take the
17 wood from the Kershaw tract.

18 A Right.

19 Q And was he asking your permission? Was he just
20 telling you that's what -- the decision they'd made?

21 A He was just telling me what was going on.

22 Q And so, there was no permission. He didn't have to
23 okay that with you.

24 A No, sir.

25 Q Now, was there any -- Other than just giving you a

1 heads-up, was there anything -- did he ask you
2 about any decisions that you had to make?

3 A No.

4 Q And he has the authority to make such a decision.
5 Is that right?

6 A He does.

7 Q Because this was tract timber versus the gate wood,
8 would he have had to negotiate a price with Chester
9 Wood on the phone?

10 A To my knowledge, I can't remember. But, in
11 situations like that, a lot of times you just absorb
12 the loss and let it just go ahead as gate wood.

13 Q Do you have any idea whether this went to Chester
14 Wood -- whether Chester Wood paid you as gate wood
15 or tract wood?

16 A I don't.

17 Q All right. So, he told you New South broke down.
18 He called Chester Wood, they were willing to take it.
19 Did he tell you the price, or anything like that?

20 A No.

21 Q And did y'all talk about anything else?

22 A No.

23 Q Did you tell him any special requirements that
24 Chester Wood required, as far as length of logs, or
25 anything like that?

1 A No.

2 Q He would've known that himself?

3 A He would have.

4 Q And so, that conversation on the phone, it was one
5 telephone conversation, and that was it.

6 A Yeah.

7 Q And so, about how long would that phone conversa-
8 tion have lasted?

9 A I don't know, a minute, two minutes, something like
10 that.

11 Q All right. Did you talk to him about the Kershaw
12 tract anymore that day, that you recall?

13 A No.

14 Q The accident that took place, do you recall when you
15 heard about that?

16 A I heard about it that following day.

17 Q And how did you hear about it? Who told you about
18 it?

19 A I don't know whether Charles Levister called Mitch,
20 or what. But, I mean, that would be my assumption
21 how it was.

22 Q All right. Are there different requirements for the
23 wood that New South will take versus Chester Wood,
24 for timber that was coming of this Kershaw tract?

25 A Yes.

1 Q Okay. Tell me the differences.

2 A It's the measured lengths. Each one takes different
3 length timber.

4 Q New South takes a longer length than Chester Wood,
5 or vice versa, or what?

6 A Well, they measure it in different increments.
7 Chester Wood's measured in nine-foot-six incre-
8 ments and New South is measured in six-foot-six
9 increments.

10 Q So, help me understand. So, there's not an overall
11 length that one will take a log that's a maximum
12 length of this and one will take a log that's a
13 maximum length of something else?

14 A Anything over 27 feet, New South will take to a
15 seven inch top.

16 Q Okay.

17 A But, if you take a short log to New south, it's got to
18 be twelve-six or sixteen-six.

19 Q Okay, I got the first one. Tell me that -- But, if you
20 take -- You got a short log to New South -- Say that
21 again.

22 A It's got to be twelve-six or sixteen-six.

23 Q You're going to have to help me understand.

24 Explain that a little bit more, if you can. I'm sorry.
25 I'm trying to keep up with you.

1 A All right. If you have a tree that the part of the
2 tree -- let's say a certain part of it has a bad spot in
3 it, --

4 Q Okay.

5 A -- New South will allow you to cut that spot out and
6 ship them a 12-foot-six-inch section of wood --

7 Q Okay.

8 A -- that's called a short log.

9 Q I got you.

10 A Or you can ship them a 16-foot-six-inch short log.

11 Q Short log, I got that.

12 A Tree length is anything over 27 feet. So, if the log
13 is good and clean and you measure it out past 27
14 feet, you don't have to measure anymore.

15 Q I got you. And you had said that Chester Wood was
16 nine-six and New South was six-six.

17 A Well, forget the six-six, okay?

18 Q Okay.

19 A Chester Wood has a minimum of 17 feet, six inches
20 for a short log.

21 Q Okay.

22 A Everything after that has to go in nine feet, six inch
23 increments.

24 Q Okay. The base is 17-six and then you add nine-six
25 on top of that and everything has to measure that

1 increment.

2 A That is correct.

3 Q That could get right tricky. You got to make sure
4 that you measure every log, unless you --

5 A Yeah, pretty much.

6 Q So, if you had a stack there and they were all similar,
7 then you could measure one and cut them all off at
8 the nine-six increment.

9 A Well, what you have is you have a mark on the
10 ground --

11 Q Okay.

12 A -- that's already set in place.

13 Q I got you.

14 A And when the log is pulled up with the knuckle
15 boom, he pulls it from that mark to that mark.

16 Q I got you.

17 A Okay. So, then it's cut off on the ground. You
18 rarely have to pull a tape on every log.

19 Q I got you. So, that -- the length issue is in the field
20 or at the deck.

21 A Correct.

22 Q Okay, I got you. Okay. Is that just because the
23 wood handling equipment has different requirements
24 or they found --

25 A It's two totally different mills.

1 Q Yes.

2 A Two different things.

3 Q Yes, okay.

4 A New South is a sawmill, Chester's a plywood mill.

5 Q I got you. And they'll have different -- they make
6 different --

7 A Their machines handle the wood differently and they
8 have to have different lengths.

9 Q Okay. Just as an aside, I thought I knew something
10 about -- knew a little about wood handling stuff. My
11 father, D. H. Dove, who ran the Bowater wood yard

12 from like 19 -- well, I don't know when he started
13 running it. He served as a crane operator. And he
14 did wood handling all his life, you know, growing up,
15 and all that stuff. So, some of this stuff is, in
16 concept to me, with it; but, you're telling me things
17 I have no clue about.

18 A Well, it's just different product.

19 Q Yes, okay.

20 (Off the record; resuming as follows.)

21 BY MR. DOVE:

22 Q All right. Let me get back to where we were. I
23 think I understand a little bit about the difference
24 between the wood requirements for New South and
25 for Chester Wood.

1 When Mitch Stines had called you and told you
2 that the wood was moving from New South --
3 because it had broken down -- to Chester Wood.
4 Do you know if any wood had been -- or any trucks,
5 loaded trucks from a Kershaw tract had tried to go
6 to New South that day?

7 A I think that's how they found out they were broke
8 down.

9 Q Okay.

10 A There was a truck that went in to New South, and
11 they were told not to bring anymore wood.

12 Q Okay.

13 A Because they were broke down.

14 Q Okay.

15 A And that message got relayed back to Levister's job,
16 and that's when, I think, he called Mitch. And that's
17 when they, you know, tried -- because, I think they
18 had like a half a truck loaded to go to New south.
19 So, that's when they made the decision to try to get
20 that truck into Chester Wood Supply.

21 Q Okay. And so, the half truck they had loaded,
22 what'd they do with that?

23 A They went ahead and, I think, finished cutting the
24 wood to go to Chester Wood Supply.

25 Q Had they done any-thing to the wood that was already

1 loaded on there?

2 A It depends on how it was cut, so I don't know.

3 Q Okay.

4 A If it wasn't cut at the right length, yeah, I don't
5 know.

6 Q Okay. If it wasn't cut at the right length, then,
7 what would they have to do with the wood that was
8 already loaded on the truck?

9 A Well, they would, I assume, have to cut some off of
10 it.

11 Q And are there -- As far as measuring to determine
12 what the length would have to be, who would do
13 that?

14 A Levister's crew.

15 Q Would they know what the length requirements
16 would be for Chester Wood?

17 A Yes.

18 Q So, the logger would know that.

19 A Correct.

20 Q Nobody would have to tell them that.

21 A (Negative response.)

22 Q That's a no?

23 A That's a no. Correct.

24 Q Now, you had indicated that -- I think -- that he
25 had called Mitch. You're talking about Charles

1 Levister had called Mitch?

2 A I think that's correct, yeah.

3 Q Okay. So, was Charles Levister out on the jobsite
4 that morning or -- when the call came in and we
5 have the truck that's got the half a load; or, would
6 Mitch have been on the jobsite or would Charles
7 Levister have been on the jobsite deck?

8 A I don't know.

9 Q And you and Mitch have talked about what happened
10 on that day, at that jobsite at the Kershaw tract, as
11 far as the loading of the truck?

12 A Other than the fact that he was going to try to get
13 the load of wood redirected to Chester Wood Supply.

14 Q Okay.

15 A And what you've got to understand is when a mill
16 breaks down, all of us get a phone call. Whoever
17 finds out about it first, each timber buyer is
18 informed of that; so, they are aware that mill is
19 down and they can reroute wood or stop a truck en
20 route.

21 Q Because, all of your buyers are loggers that are
22 working with Myers, the buyers. They could be
23 taking wood to the same place.

24 A Correct.

25 Q All right. So, then the buyers would then notify --

1 or, did you have any wood that was going to New
2 South that day?

3 A I can't remember.

4 Q If you did, then what would have been your normal
5 response, once you found out New South was broke
6 down?

7 A If I had a contract logger cutting on me, then I
8 would call him and say, you know, "Shift over into
9 the pulpwood, you know, New South's down; and, I
10 don't know when they're going to start taking back.
11 I'll have to let you know."

12 Q And when you say "shift over into the pulpwood,"
13 what do you -- I mean, to a new mill, going to a
14 new mill?

15 A Well, you'll go to a different mill, but with a
16 different product.

17 Q Oh, I got you. Okay. I got you. I see what you're
18 talking about now.

19 And that was a -- Was that a pretty normal
20 occurrence for you to make such a phone call, or
21 buyers to make such a phone call?

22 A No.

23 Q The mills didn't shut down that much.

24 A They don't, as a normal practice, no.

25 Q They would just offload and stockpile. They might

1 not be --

2 A They could've had a crane go down.

3 Q Got you. Are there other -- So, the truck that was
4 at the Kershaw tract that was half-loaded, did Mitch
5 indicate that that truck was then loaded and the
6 wood was cut for Chester Wood specifications, or
7 anything?

8 A No indication.

9 Q Do you know if that truck that was being loaded at
10 the time was, in fact, the truck that George Rogers
11 was driving in this wreck?

12 A No, I do not.

13 Q So, the mills have their own requirements for
14 logging. Do any of the mills have weight require-
15 ments for how much tonnage -- Is it by tons?

16 A It's by the ton.

17 Q By tons that can be on a truck going into their
18 facility.

19 A No, not at that time, they did not.

20 Q Do they have it now?

21 A Some of them have done that, yeah.

22 Q Is it different weight limits or is it --

23 A State law has increased the weight limits.

24 Q And what is the weight limit?

25 A Eighty-four thousand.

1 A It will have a dealer number on it.

2 Q Okay.

3 A And it's a tract number or a tract name, and it will
4 have the logger's name on it.

5 Q Okay.

6 A And they weigh the truck on the scale at that time.
7 The logs, the trailer, the truck, everything was
8 weighed.

9 Q Okay.

10 A He goes into the mill to the unloading area.

11 Q Okay.

12 A They unload the truck, he comes back out, they
13 weigh him again, and they hand him a ticket.

14 Q What does the driver do with the ticket?

15 A He carries the ticket back and gives it to the fore-
16 man or the owner of the logging company.

17 Q And then they take that ticket from that first one
18 and if they need to adjust the weight, they can use
19 what's on that ticket to adjust the weight.

20 A Yes.

21 Q Are there any other -- Is it a practice for the mill to
22 write any sort of directions or instructions, or
23 anything, on that ticket? That's a delivery ticket,
24 maybe? What's that called?

25 A It's just a weight ticket.

1 Q Weight ticket. All right. Would they write any sort
2 of instructions to the people in the field on that
3 ticket?

4 A No.

5 Q Now, the ticket that the -- or the card, the mill
6 card -- Is that what it's called? -- the card that he
7 takes in with him?

8 A Right.

9 Q Okay. The mill card, then, where does the driver
10 get that mill card?

11 A We fill the cards out and give them to the owner or
12 foreman of the job, and he gives them to the truck
13 drivers.

14 Q And would that be done when the logger and buyer
15 would first meet in the field to see if the logger
16 wanted the job, or would it be -- would it have been
17 done that morning?

18 A It would be done only in the beginning.

19 Q It would be done when they first started cutting or
20 when the contract was agreed on?

21 A Whatever that they agreed on it, that we would
22 furnish that to them at that time.

23 Q So, when you're out in the field, the logger says,
24 "Yeah, I'll do it for what you're going to pay." And
25 then, "Here's the cards, the bill cards."

1 A Right.

2 Q So, a driver, then -- How many mills cards were
3 being provided?

4 A However many the logger asked for.

5 Q Okay, I got you.

6 A If he's got two trucks, he'd get two.

7 Q I got you.

8 A If he's got four trucks, he gets four.

9 Q And so, that -- Are those mill cards kind of
10 protected in some way, almost like a doctor's
11 prescription pad would be? And is the mill -- Is it

12 very particular? Is a mill going to be particular?

13 This has got to be their mill card and somehow a
14 security thing for them?

15 A It's got to be their card.

16 Q So, for that, there would've been a Chester Mill
17 card and if a change was going to be made on that
18 day, from going to New South to Chester Wood, a
19 new mill card would have to have been filled out for
20 Chester Wood.

21 A That is correct.

22 Q And then that would've been a Chester Wood mill
23 card that Mitch would've had to fill out, and he
24 would've given it to Levister.

25 A Correct.

1 that, you know--

2 Q Okay. Has Myers Trucking ever --

3 A Myers is not a trucking company.

4 Q I'm sorry. Myers Timber. If I say Myers Trucking,
5 I mean Myers Timber. Myers Timber.

6 Has Myers Timber ever paid any fine for a
7 logger for any reason; for being overloaded or any
8 other reason?

9 A That's their responsibility if they're overloaded.

10 Q So, the answer would be no, they haven't.

11 A Right.

12 Q Has Myers Timber ever been fined itself for one of
13 its loggers being overloaded, or anything?

14 A No.

15 Q The Kershaw tract, do you know who owned -- who's
16 the owner of that? -- or, who was the owner, at that
17 time?

18 A Not today, I don't. I mean, I could look in my files.

19 Q A CDL -- Do you possess a commercial driver's
20 license, a CDL?

21 A No, I do not.

22 Q Have you ever had one?

23 A No.

24 Q After this wreck happened, did Myers Timber
25 continue to use Charles Levister for hauling off the

1 started cutting off the Kershaw tract.

2 A Correct.

3 Q Has Mitch had to -- Mitch Stines, has he had to
4 complete any sort of reports about his knowledge
5 of this wreck?

6 A No.

7 Q Or anything that had to do with what happened at
8 that Kershaw tract on March 26, 2007?

9 A No.

10 Q So, has he met with any insurance agents to tell
11 about what happened on that day?

12 A No.

13 Q Has he met with any government employees who
14 may've been investigating this thing?

15 A No.

16 Q And nothing internally; there's been no report from
17 Myers Timber --

18 MR. DOVE: Okay, let me -- I think that may be
19 all. Let me talk to you for just a minute, if I could.

20 (Off the record; resuming as follows:)

21 BY MR. DOVE:

22 Q Okay, just one follow-up -- one set of follow-up
23 questions, Mr. Myers. Tell me, on the loggers,
24 then, they have a cut and haul rate. So, using the
25 Kershaw tract or -- If you need to -- how, then, and

1 approximately how much would Charles Levister be
2 paid? Tell me about how the pay takes place, when
3 it takes place, what it's based on, and those things.

4 A Well, it's based on so much a ton to cut it down and
5 drag it to the log gate.

6 Q Okay.

7 A Then it's based on per mile for that point on. It's
8 \$10 a ton --

9 Q Okay.

10 A -- to the deck. It's a 40-mile minimum. If he's 20
11 miles from the tract, at 10 cents a loaded mile, 40
12 miles would be four dollars. Okay. So, he gets \$14
13 a ton.

14 Q Okay.

15 A If it's 50 miles, he would get \$15 a ton.

16 Q Okay.

17 A The cost of coming to the deck is a constant figure.
18 The only thing that changes would be the mileage.

19 Q Okay.

20 A And the mileage is based on us running a computer
21 program that tells the miles. They can travel it any
22 way they want to travel it, but we pay based on the
23 shortest route.

24 Q All right. Let me go back and ask about -- Okay,
25 you said \$10 a ton to take it out of the woods and

1 bring it to the deck.

2 A Correct.

3 Q How do you determine how many tons that is?

4 Because, you've got limbs and things you cut off,
5 and all that.

6 A It's based on the weight ticket.

7 Q Oh, okay.

8 A It's based on the weight ticket.

9 Q -- finished wood.

10 A Correct.

11 Q Okay, based on the weight ticket.

12 A Right.

13 Q Help me understand, then, the mileage. So, there's
14 a minimum of --

15 A Of \$14 a ton.

16 Q Okay. And that's based on 40 miles.

17 A Correct.

18 Q Now, is that round trip? So, 20 --

19 A It's one way.

20 Q So, based on 40 miles. Okay. And so \$14 a ton is
21 the minimum, then -- If you only had to drive five
22 miles, you'd still get \$14 a ton.

23 A Correct.

24 Q And then, if it's more than that, who knows -- I

25 mean, do you already know if it's more than that?

1 You've already figured it out or they tell you, "Hey,
2 I'm driving more than 40 miles."

3 A Well, we figure out.

4 Q So, that would be -- When you figure that out,
5 would that be before the contract was let or after
6 the contract?

7 A Before.

8 Q So, would it basically be in that first walk in the --
9 on the tract?

10 A Correct.

11 Q So, you say, "Well, this is 60 miles, and we're going
12 to pay you on 60 miles."

13 A Correct.

14 Q And the 60 miles is a -- based on a computer
15 program that y'all -- Do y'all have that? Or, is it
16 like an industry computer program?

17 A Well, no, it's -- You can do it. It's just like the
18 website you would go to, to figure out how to get to
19 Charleston, South Carolina, from here. It will give
20 you the --

21 Q Like MapQuest, or something.

22 A Yeah.

23 Q So, you all would look on a MapQuest-type program.

24 A Right.

25 Q So, it wouldn't be a program that was just specific

1 to Myers Timber or loggers.

2 A It's MapQuest.

3 Q So, you'd go on MapQuest and then, if MapQuest
4 says it's 60 miles, and so, you'll pay based on 60
5 miles.

6 A Correct.

7 Q When you give that to them -- And MapQuest is
8 going to do the shortest route.

9 A That's how we figure it.

10 Q Do they get a copy of the MapQuest? Do you tell
11 them what the roads are on MapQuest?

12 A No.

13 Q And do you tell them that's where you pulled it from,
14 from MapQuest?

15 A If they ask, certainly; sure.

16 Q Okay. Interesting. And are they paid per day, per
17 week, at the end of the job? When would the logger
18 get paid?

19 A He gets paid on Fridays or Mondays, whichever they
20 prefer.

21 Q But that's all based on -- It's primarily based on,
22 then, the tickets that come back.

23 A The scale tickets.

24 Q The scale tickets. Okay. All right. And so, in order
25 to get paid, they've got to -- they have to give

1 Myers, then, the scale tickets.

2 A Correct.

3 Q Would Mitch Stines -- Or, would a buyer normally
4 stay out on the site --

5 A No.

6 Q -- for any length of time? They -- Do they come by
7 and check on the jobs?

8 A They just -- They go by, walk the job, make sure
9 that they're not dropping trees across property lines,
10 and that type thing. But no, they don't stay on the
11 job.

12 Q Would they check on it once a day, once a week?

13 A Probably once every two days.

14 Q Okay.

15 A Rarely would it go to three.

16 Q So, about every other day, then, they are out
17 checking on a job. And then, once they've checked
18 on it, do they then tell the -- have a conversation
19 with the logger to how things are going?

20 A If the logger's on the job and they see something
21 they need to address, they will. Otherwise, they
22 just wave at him and go back in the truck and leave.

23 Q Now, if the logger is not there, but the people in
24 the -- the guys who are cutting the trees are there,
25 or something like that, do they discuss with those

1 people -- they pass along information to those
2 people?

3 A No.

4 Q So, it's only with the logger.

5 A Only with who the -- or the logger may have a
6 foreman.

7 Q Okay.

8 A So, if there's a foreman, yes.

9 Q But not with just regular people who work with
10 loggers.

11 A I personally don't even know who most of the
12 skidder operators are.

13 Q Okay.

14 A Because, I don't deal with them.

15 MR. DOVE: All right. Thank you very much. I
16 appreciate your time today.

17 MR. JORDAN: Let's go ahead and mark this
18 document. This is the ticket we got from --

19 (Plaintiff's Exhibit No. 1 marked for
20 identification.)

21 EXAMINATION - (By Mr. Jordan)

22 Q Mr. Myers, is that the ticket from Chester Wood on
23 the load that was involved in the wreck?

24 A Yes, it is.

25 Q And looking up at the top left corner, what was the

1 gross weight? And that's the vehicle weight, too.

2 Is that correct?

3 A That would be the gross weight, yes.

4 Q And what was the weight?

5 A It was 82,120 pounds.

6 Q So, would you agree that that truck was overloaded,
7 at the time?

8 A Based on that it was, yes.

9 Q And moving on down, it says that the contract was
10 Myers Timber Company.

11 A Correct.

12 Q And the truck number, what is that? How are the
13 truck numbers assigned?

14 A I don't know. I have no idea.

15 Q And then, "Sale ID," it says "Myers." One's "SS,"
16 or is that "55"?

17 A Looks like "SS" to me. I don't know what the "SS"
18 is.

19 Q Okay. And it has "Faulkenberry." Would that have
20 been the tract name?

21 A That would've been the tract name.

22 Q And then, what is the number on the side of
23 "Faulkenberry"?

24 A That would be Faulkenberry tract's number.

25 Q And then, underneath "notes," it says "Levister" and

1 then "cull pending."

2 A At Chester Wood Supply, they spread every load.

3 Okay? So, when this truck went in the mill, the
4 gross weight was eighty-two, one twenty; the tail
5 was thirty-seven, sixty --

6 Q And what's the tail? What do you mean by that?

7 A That means that's how much the truck and the
8 trailer weighed when it came back across the scales.

9 Q Okay.

10 A The "net" would be fifty-one, three sixty, which is
11 25.68 tons.

12 Q And, on the side of that, what was the seven sixty-
13 two? You see, under "CFT"?

14 A I have no idea.

15 Q Okay.

16 A That's some of their codes. So, when it says "cull
17 pending," that load of wood that went across the
18 scales, you get this tonnage back, thick ticket.
19 Okay? At Chester Wood Supply, they take that
20 whole load of wood and roll it out; and, they go to
21 each log and they measure each log to make sure
22 that it had the right length; that there weren't any
23 defects in the log. Okay? And then, we will get a
24 corrected ticket with that same ticket number with
25 all the same information telling us what the deducts

1 were.

2 Q And did you, in fact, get a ticket for this?

3 A I'm sure we did, but, I mean, I don't have it. I don't
4 know.

5 Q You don't still have a copy of it?

6 A I could look and see.

7 Q Okay.

8 A We could probably find the computer printout, but
9 the original tickets will go to the landowners.

10 Q And going on down, it says "pine saw timber."

11 A Correct.

12 Q That's the log type?

13 A Yes.

14 Q And then, "paid class," it says "cut to length."

15 A "Cut to length."

16 Q What does that mean?

17 A Like I explained before.

18 Q Okay. And then, "mill" is Chester Plywood.

19 A Uh-huh (affirmative).

20 Q And it has an average load length and a zero there.

21 Why would there be a zero by the average load
22 length? Is that because they're waiting to measure?

23 A Excuse me?

24 Q Is that because they're still waiting to measure, at
25 that point?

1 loaded.

2 Q And Myers Timber would instruct Levister where to
3 harvest -- You would tell Levister where -- which
4 tract to go harvest.

5 A Correct.

6 Q And you would tell Levister where to transport the
7 timber.

8 A Correct.

9 Q And would you also instruct them about how the
10 logs needed to be cut, or would they already know
11 that?

12 A They'd already know that.

13 Q Based on the fact that they're hauling to other
14 dealers?

15 A Correct.

16 Q Do you know if Levister was a dealer?

17 A No.

18 Q And only two employees on the scene were Michael
19 Stines and Paul Davis, from your company.

20 A I don't know whether Paul was there, or not.

21 Q Okay.

22 A But, Mitch had gone by there.

23 Q And do you know -- Was it Michael -- excuse me --
24 Mitch that told George Rogers where to take the
25 load?

1 A I don't know that he told George Rogers.

2 Q Do you know who would've told George Rogers?

3 A Charles Levister.

4 Q And Mitch would've told --

5 A Levister.

6 Q -- Levister. Okay. Would you agree that these
7 logging trucks are subject to the Federal Motor
8 Carrier Safety Regulations?

9 A In the State of South Carolina.

10 Q But you don't own any logging trucks.

11 A No.

12 Q And you contract with loggers to haul your timber.

13 A Well, I contract with the loggers to harvest the
14 timber, and they use either their own trucks or
15 contract haulers.

16 Q Would you agree that the Federal Motor Carrier
17 Safety Regulations require these logging trucks to
18 have adequate brakes to stop?

19 A I'm not in that business.

20 Q Okay.

21 A I mean, you're asking me something that I have
22 nothing to do with. But --

23 Q You would agree that, in support of that, that a
24 truck have brakes on it. Would --

25 A I agree.

1 Q -- you agree?

2 A I don't disagree with that.

3 Q What you're saying is you're not familiar with the
4 Federal Motor Carrier Safety Regulations..

5 A I'm not. I'm really not.

6 Q If one of your employees, or you, knew that a truck
7 did not have adequate brakes, would you still allow
8 your timber to be loaded on it and hauled out down
9 the highways?

10 A I would hope not.

11 Q And why is that?

12 A Well, I mean, the problem is how am I going to
13 know, you know.

14 Q Okay, but my question is --

15 A I don't own the trucks. I don't inspect the trucks.
16 I know nothing about the trucks. I mean, you're
17 asking me something that I have nothing to do with.

18 Q Assuming you did know or had some reason to know
19 that a truck did not have adequate brakes, what
20 steps would you take, at that point?

21 A If I had a reason to know that the truck did not
22 have adequate brakes, I would tell Mr. Levister, you
23 know, my understand is the truck didn't have
24 adequate brakes and he needed to do something
25 about it.

1 Q And would you allow him to load your timber on
2 that truck and drive down the highways knowing
3 that?

4 A No.

5 Q Does each driver -- You may not know, but does
6 each driver submit an inspection report every day,
7 after driving a truck?

8 A I don't know.

9 Q Do you ever ask for inspection reports or driver
10 reports for the trucks that are hauling timber?

11 A No.

12 Q And this was the only job that you worked with
13 Levister on, to your knowledge.

14 A To my knowledge.

15 Q And that job started the week before.

16 A Correct.

17 Q Was the Faulkenberry stand the only timber stand
18 that he'd worked on?

19 A For Myers Timber Company.

20 Q Do you know how many times he had transported
21 during that week before --

22 A I don't know.

23 Q And do you know how many times they had made --
24 transported to the mill that day, before the accident
25 occurred?

1 them to Chester Wood for you?

2 A Excuse me, now?

3 Q What it as employee of Levister that picked up the
4 logs and --

5 A I don't know.

6 Q Did you have any conversation with anyone from
7 Levister about what to do with those logs, once the
8 accident occurred?

9 A I did not.

10 Q Your business is based on buying timber and then
11 getting it harvested, transporting it, so that your
12 company can make money.

13 A My business is to buy timber and have an
14 independent contractor harvest the wood and send
15 it to a mill that I have a dealership with.

16 Q And the way your company makes money is to be
17 able to harvest and transport the wood that you
18 purchase to the mill, so that you get paid.

19 A Correct.

20 Q And, if you didn't have anybody to harvest and
21 transport the timber that you own, would you be
22 able to get paid?

23 A No.

24 Q So, would you agree that having a logger --
25 someone to harvest and transport that timber is an

1 integral part of your business that enables you to
2 get paid?

3 A Yes.

4 Q And you've indicated that Levister was an
5 independent contractor that day.

6 A Correct.

7 Q Would you agree that they were acting on your
8 behalf, as an agent, to haul that timber to the mill?

9 A No, I would not.

10 Q How would you describe the relationship with Myers
11 Timber?

12 A They were independent contractors that harvested
13 timber that we had purchased, and we paid them on
14 a per-ton basis to deliver timber to the mill.

15 Q Again, if you didn't have someone to harvest and
16 transport that timber, would your company be able
17 to get paid?

18 A No.

19 Q And, if your company wouldn't be able to get paid,
20 would you ultimately be out of business?

21 A Ultimately.

22 Q Did you have any type of written arrangement with
23 Levister?

24 A No.

25 Q Do you know how much profit Myers made off of

1 that tract?

2 A No.

3 Q Do you have records on that?

4 A Yes.

5 Q Can you provide those to your attorney?

6 A Yes.

7 Q Did Mr. Stines or Mr. Davis ever indicate to you
8 that they had any knowledge that the truck was
9 overloaded at the tract?

10 A No.

11 Q And do you know whether or not Levister had any
12 type of scales out on the scene?

13 A To my knowledge, he did not.

14 Q Do you know whether or not Levister or Mr. Rogers
15 had checked the brakes on that truck before leaving?

16 A I do not.

17 Q Have you ever asked one of the loggers that worked
18 for you for any type of truck inspection records?

19 A No.

20 Q Have you ever asked any of the loggers that have
21 worked for you for any type of a driving --

22 MR. WILKERSON: Object to the form of the
23 question, when you're saying "worked." He's
24 repeatedly stated there wasn't any contract.

25 MR. JORDAN: I'll rephrase it.

1 BY MR. JORDAN:

2 Q Have you ever asked any independent contractor/
3 loggers, that have hauled your timber, for safety
4 records on their trucks?

5 A No.

6 Q Have you ever asked any of the independent
7 contractor/loggers that have hauled your timber for
8 any kind of inspection records on their trucks?

9 A No.

10 Q Have you ever asked any of the independent
11 contractor/loggers that have hauled your timber for
12 any type of driver safety records?

13 A No.

14 Q You indicated that the mills require you to have one
15 million dollars in insurance.

16 A Correct.

17 Q What does that insurance cover?

18 A It's a general liability policy.

19 Q And have you ever had to use that insurance?

20 A No.

21 Q Have any of your employees ever assisted with
22 loading timber?

23 A No.

24 Q Hauling timber?

25 A No.

1 Q Mr. Myers, you don't dispute that this accident
2 resulted in very serious injuries to Alice Quinton
3 and Timothy Quinton and resulted in the death of
4 their daughter Hannah Quinton. You don't dispute
5 that.

6 A No.

7 Q Do you have any type of policy, with regard to --
8 with Myers Timber, with regard to the independent
9 contractors you hire? How do you choose them,
10 other than word of mouth?

11 A That's basically the only way that we do.

12 Q You've indicated that you ask for workers' compen-
13 sation coverage. Is that correct?

14 A Uh-huh (affirmative).

15 Q Do you ask for a general liability policy -- evidence
16 of that before they're allowed to haul your timber?

17 A As a rule, no.

18 Q Why not?

19 A Just never have, never done it.

20 Q If you had to choose between a logger that had a
21 safety record that was clean versus a logger that
22 had a history of running unsafe trucks, who would
23 you choose?

24 A The safe logger.

25 Q But, your company never checked into the safety of

1 the logging contractors.

2 A No.

3 Q Why would you have an employee out on the tract
4 that day -- or, generally why would your employees
5 be out on the tract, other than to show the
6 boundaries?

7 A They go by the tract, like I explained to Mr. Dove,
8 to make sure there's no timber been felled across
9 the line, that the -- that they have not crossed the
10 property line.

11 Q Does Paul Davis still work for Myers Timber?

12 A He does.

13 Q How long has he been there?

14 A Six years.

15 Q And what about Mitch Stines; how long has he
16 worked there?

17 A Fourteen years.

18 Q Did Mitch Stines tell you about the accident?

19 A I think he did, yes, sir.

20 Q Do you remember what he told you?

21 A He told me that one of Levister's trucks had been
22 involved in a bad accident.

23 Q Do you remember specifically what he said or --

24 A No, I don't.

25 Q Do you remember what you told him?

1 A To be honest, no, I do not. I really can't remember.

2 Q And did you have any personal knowledge of Levister
3 before he started work on the Faulkenberry tract?

4 A I knew his name, that's all.

5 Q You don't know what Mitch Stines knew of him.

6 A He would have known him -- You know, I think
7 Levister harvested most of the wood in Fairfield
8 County. That's where he'd cut previously. And
9 Mitch would've seen some of his work and, I mean,
10 he would certainly have known more than me.

11 MR. JORDAN: Can we take just quick break.

12 That might be all I have.

13 (Brief break; resuming as follows:)

14 BY MR. JORDAN:

15 Q Mr. Myers, do you maintain that your employees
16 were out there to make sure they weren't cutting
17 over the line. Is that correct?

18 A Correct.

19 Q And, if you found out that a logger was cutting over
20 the line, what would y'all do?

21 A Well, the first thing we would do is we would correct
22 it from the standpoint of going to Levister, or
23 whoever the foreman was on the job, and make
24 them aware of it. And the very next thing we would
25 do would be to pick up the phone and try to find out

1 who the adjoining landowner is by going to the
2 county tax office; and then, you would, of course,
3 go to them and have them come out, you know, and
4 show them what had happened.

5 Q Okay.

6 A Hopefully, that doesn't happen.

7 Q What if your got out there and you found out that
8 the logger wasn't -- I mean, he just is a wreck. I
9 mean, he was -- you know, he won't keep it neat for
10 the landowner. Suppose you got out there and it
11 wasn't neat; I mean, they weren't doing the job you
12 wanted them to do. What would you do, at that
13 point?

14 A Stop them from harvesting. I'd go to Levister and
15 say, "This relationship's not working."

16 Q So, basically, you had the right to tell them you had
17 to keep it neat for that landowner.

18 A Well, yeah. Yes, basically.

19 Q And give us some examples of how it may not be
20 neat.

21 A Well, I think this particular tract was a clean cut. In
22 other words, you know, a clean cut looks good. I
23 mean, because you have small saplings in there that
24 are not marketable material, and they're going to
25 get run over, bent over, skinned, you know; and,

1 Q Okay.

2 A But, there's no internal Myers Timber Company
3 program. And the computer copy that I'll get you
4 would show not only this tract, but it would be other
5 tracts in there, also.

6 Q I got you. Okay. So, if we were going to ask for
7 such a computer thing, it would be -- provide the
8 computer printout from Chester Wood Products that
9 contained the Faulkenberry tract.

10 A Why don't you do this: Why don't you let me just put
11 everything I've got --

12 Q Okay.

13 A -- that deals with this tract.

14 Q Okay.

15 A And I'll sent it up here to my attorney. He can give
16 it to you. And if you need anything else or have
17 anymore questions, I'll be glad to try to supply it.

18 MR. DOVE: Thank you. That's all I have.

19 * * * * *

20 (Concluded at 2:00 P.M.)

21 * * * * *

22

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Carlton Quinton as Guardian for
Timothy Quinton, a Minor under the
Age of Eighteen,

Plaintiff,

vs.

Myers Timber Company, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

Case Numbers: 10-CP-12-00137
10-CP-12-00136
10-CP-12-00135
10-CP-12-00134
10-CP-12-00133

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Alice Quinton and Carlton Quinton,

Plaintiffs,

Vs.

Myers Timber Company, Inc.,

Defendant.

DEPOSITION OF PAUL DAVIS

ROCK HILL, SOUTH CAROLINA

DECEMBER 13, 2010

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Carlton Quinton as Personal
Representative of the Estate of
Hannah Nicole Quinton, deceased,

Plaintiff,

Vs.

Myers Timber Company, Inc.,

Defendant.

REPORTER: Robble E. Moskau, CCR

 COPY

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ROCK HILL, SOUTH CAROLINA

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1 Q Do you know if anybody from Myers Timber did?

2 A I do not know.

3 Q Did you cut anymore wood with them, with Roger
4 Faulkenberry or the uncle, after this wreck?

5 A They finished the tract that they were cutting on.

6 Q Okay.

7 A Since then, no, I have not talked to anyone.

8 Q Do you know -- Is there a reason why not?

9 A Because they don't have any that needs to be cut.

10 Q Okay, y'all got it all. Okay. Now, Charles Levister --
11 How was it decided that Charles Levister would be

12 the one cutting that Faulkenberry tract?

13 A Because I assumed that he needed a tract to cut
14 and that one was available for him to cut and for --
15 you know, so, that's why we cut it.

16 Q Who negotiated the contract with Charles Levister?

17 A We didn't have a contract with Charles Levister.

18 Q And you said that "we didn't have a contract with
19 Charles Levister." Tell me what you mean by that.

20 A We didn't have a written contract with Charles
21 Levister on anything.

22 Q Have you used Charles Levister on any of the tracts
23 that you've done?

24 A No, sir.

25 Q This was the first time.

1 and the uncle's tracts?

2 A Yeah.

3 Q And do you recall whether or not you or Mitch or
4 someone else from Myers went out and set up
5 buffers, or did you both set up buffers?

6 A Yes.

7 Q And did you direct Levister where to cut?

8 A Yes.

9 Q Was there an issue about the loading place on that
10 tract?

11 A No, sir.

12 Q And was there an issue about ingress or egress on
13 the tract?

14 A No.

15 Q And would you be the one, typically, to tell Levister
16 where we're hauling to today?

17 A I guess, it would be me and Mitch. I mean, not
18 necessarily on where to haul to today; that's up to
19 Levister. We tell Levister where to haul the wood
20 to, off of the tract. It just so happened that, when
21 New South broke down, we had -- you know, had
22 that load redirected. But, we don't instruct the
23 loggers on where they need to haul to on any given
24 day.

25 Q On this particular instance, though, y'all told

1 A I didn't really know Levister before he came -- I
2 think he cut a tract for Mitch -- or two, like he
3 testified. And I didn't have a relationship with
4 Charles Levister.

5 Q Did you ever check the safety record for Mr. Levister
6 or his drivers?

7 A No.

8 Q Why not?

9 A It's the logger's responsibility to ensure that his
10 equipment is safe to operate.

11 Q Myers carries workers' comp insurance.

12 A I think, yes.

13 Q Do you know if any instance where a logger has
14 ever claimed Myers to be the statutory employer in --

15 A I don't know.

16 Q Levister was used, after this tract, by Myers.

17 A Yes.

18 Q Did you all check his trucks and trailers, at that
19 time?

20 A No.

21 Q Why not?

22 A That's the logger's responsibility to ensure that his
23 equipment's safe to operate. And I'm not qualified
24 to inspect the truck and trailer.

25 Q If you had seen a trailer out there on the Faulken-

1 berry tract or some other tract that had bald tires,
2 or you were aware that there were no brakes on the
3 truck or trailer, or insufficient brakes, would you
4 have allowed that truck to pull off?

5 A I don't -- Like I say, it's the logger's responsibility
6 to make sure his equipment's safe to operate.

7 Q Would you agree it's safer to have working brakes
8 on a log truck?

9 A Absolutely.

10 Q And you wouldn't want people hauling your logs in
11 an unsafe truck, if you knew about it; would you?

12 A No.

13 Q So, you don't think it would be your responsibility,
14 if you saw something unsafe, to --

15 A I'm not qualified to inspect trucks.

16 Q Myers has to sell this timber in order to get paid.

17 A Yes, sir.

18 Q So, cutting, hauling and selling that timber is what
19 y'all do.

20 A Yes, sir.

21 Q That is your business, isn't it?

22 A Yes, sir.

23 Q If a logger left a property in pretty bad shape,
24 would you go out and tell the logger that they
25 needed to clean up the property?

1 A I would.

2 Q Has that ever occurred before?

3 A If a logger -- It has occurred that something that
4 didn't happen -- you know, that the logger moved
5 before something got completed on a tract. And,
6 yes, I could suggest to him or ask him, or whatever,
7 to go out there and fix it; but, it's up to him to do it
8 or not do it.

9 Q If a landowner ever had a problem, would you ever
10 tell that landowner they need to take it up with the
11 logger?

12 A No.

13 Q Because, it was ultimately your responsibility --

14 A Correct.

15 Q -- to make sure that that wood was moved
16 correctly.

17 A Yes.

18 Q Do you recall how many acres was on the uncle's
19 tract?

20 A Thirty, or so. I don't recall the exact amount of
21 acres.

22 Q George Rogers and Mr. Levister were told on that
23 day, March 26th of 2007, to not go to New South,
24 but to go to Chester Wood.

25 A I don't know.

1 Q Did you tell them that?

2 A No.

3 Q And do you know if Mitch did?

4 A To not --

5 Q Did you say not to take a load to New South, but to
6 take it to Chester Wood instead?

7 A That they needed to haul their saw timber to
8 Chester Wood?

9 Q Yes.

10 A Yes.

11 Q Who told them that?

12 A I guess Mitch did.

13 Q It wasn't you.

14 A I don't think so. I don't really recall.

15 Q Do you recall getting e-mails about the deductions
16 that Chester Wood had taken?

17 A I don't get the e-mails.

18 Q Do you know who gets the e-mails?

19 A Now the secretary and Mitch do, I guess. I don't
20 think they were doing the e-mails at that time.
21 They were sending the faxes of the deduction
22 sheets. And they only did that periodically through-
23 out the week.

24 Q If Myers was getting tickets that showed that a
25 truck was overweight or a logger was continuously

1 hauling wood that was overweight, would y'all tell
2 them, "Hey, you need to not load these trucks so
3 heavy."?

4 A I mean, I don't want them to haul overweight. But,
5 I mean, it's the logger's responsibility to make sure
6 that his truck is loaded adequately.

7 Q Do the mills send out an initial ticket and then give
8 a final ticket some days later?

9 A Yes, that's correct. Just Chester does.

10 Q Just Chester.

11 A Uh-uh (affirmative).

12 Q The rest of them give you tickets and it's final right
13 there.

14 A Right.

15 Q From Chester, you got -- somewhat later, you got
16 another ticket showing the final deductions.

17 A Right.

18 Q And the ticket for the final deduction goes to Myers.

19 A Correct.

20 Q Because, ultimately, you know, if a logger's leaving
21 a lot of knots or crooked trees, y'all are going to be
22 held responsible and be deducted from what you get
23 paid --

24 A Correct.

25 Q -- for the job that the loggers did.

1 A Yes, sir.

2 Q Had George Rogers been one of the truck drivers
3 that had been out on Roger's tract, before he
4 started on the uncle's?

5 A I don't know. I've never met George Rogers.

6 Q The truck and trailer that were involved in the
7 wreck, had Levister been using that truck and trailer
8 on Roger's tract?

9 A I don't know. I assume so, but I don't know.

10 Q Had you ever taken a look at the truck and trailer
11 before?

12 A To be honest with you, when I go on a logging job,
13 I walk around and make sure they've cut the timber,
14 you know, staying with the property lines, and all
15 that. But, I don't pay any attention. We probably
16 see 50 trucks a day, you know.

17 Q If they're leaving too much of a stump, do you tell
18 them that they need to fix that?

19 A Correct.

20 Q If they're cutting outside your buffer, you tell them
21 to fix it.

22 A Correct.

23 Q If they're leaving a mess on the property owner's
24 property, you tell them they need to fix it.

25 A Correct.

1 Q Do you know who transported the logs after the
2 wreck?

3 A No, sir.

4 Q Were you aware that the truck was overloaded?

5 A No, sir.

6 Q You found out today, sitting in the deposition of
7 Mitch?

8 A Oh, after the truck was loaded, after the incident,
9 and everything? I found out after Freddy gave his
10 deposition.

11 Q And the logs were owned by Myers up until the time
12 they got delivered to Chester wood on March the 27th.

13 A Correct.

14 Q You don't dispute the fact that someone from Myers
15 told George Rogers and Charles Levister not to go to
16 New South, but to go to Chester Wood that day. You
17 just don't remember if it was you or Mitch.

18 A That's correct.

19 Q And sitting here today, you don't dispute that there
20 were serious injuries and death that occurred in this
21 wreck.

22 A No.

23 MR. JORDAN: Just one moment.

24 (Brief break; resuming as follows:)

25 MR. JORDAN: I don't have anything further.

1 MR. WILKERSON: Nothing.

2 MR. DOVE: Just a couple of follow-up there
3 from Brad's questions.

4 EXAMINATION - (By Mr. Dove)

5 Q And, really, the first question that I've had for you,
6 again, having gone through the testimony with
7 Brad, is there any difference in the testimony that
8 you heard Mitch give and the testimony that you
9 would give in response to the same questions that
10 were asked you? Any substantive difference
11 between what Mitch responded to and what you
12 would respond to?

13 A Just about, you know -- Mitch -- I don't think he
14 realized about them being two separate landowners,
15 because I'm the one that dealt with that part of it.

16 Q Okay.

17 A As far as the other stuff goes, I mean, I think
18 everything was fine.

19 Q Everything was fine with his testimony.

20 A Yeah.

21 Q Okay. I couldn't quite get this. Did you learn --
22 When you heard about the wreck, did you learn that
23 it was a problem or that there were allegations that
24 the brakes were inadequate on the Rogers -- on the
25 vehicle that Rogers was driving?

1 A I don't think that I heard -- I mean, all I knew is
2 that there was an accident. I didn't know about
3 any kind of brakes or really being overloaded, or
4 anything like that.

5 Q Okay. If you would've known about -- If that had
6 been reported to you -- In your position, if that had
7 been reported to you, you knew that that tractor
8 and trailer didn't have adequate brakes, if you
9 knew that that load was -- It was overloaded,
10 representing Myers Timber, what would you have
11 done? -- or what should you have done?

12 A I mean, I would either tell Levister that he needs to
13 try to ensure that he runs safe vehicles. But,
14 ultimately, it's up to Charles Levister to ensure that
15 he is running safe equipment on his job.

16 Q All right. You've been with Myers for the past six
17 years. When you started, Mitch was an owner --
18 part-owner of the company, Myers Timber. Is that
19 right?

20 A Yes, sir.

21 Q And about when did that change?

22 A To be honest with you, that was between him and
23 Freddy and it didn't have anything to do with me. I
24 don't -- I'm not exactly sure.

25 Q Have you heard any reason why that changed?

1 A No, sir.

2 Q And from a truck being overweight, you'd indicated,
3 in response to Brad's questions, about that you
4 wouldn't want a truck to be overweight, or some-
5 thing along that line. Is that right?

6 A Yes, sir.

7 Q Why not?

8 A Just because, I mean, I would hope that the trucks
9 or the operators are being safe up and down the
10 road. But, I mean, it's not my responsibility. I
11 don't know anything about loading the actual trucks,
12 or anything like that. So, I mean, I don't know if
13 they're overweight or not overweight, whenever
14 they leave the job.

15 Q Okay.

16 A And really, nobody does.

17 Q So, is there any difference in how much money
18 Myers makes whether they're overloaded, or not?

19 A Myers Timber Company gets paid by the ton.

20 Q So, it really doesn't matter if -- to Myers, if they're
21 overloaded.

22 A On that particular truck, I mean, it doesn't matter
23 if they're overloaded, or not. Because, if they haul
24 wood to the mill, if they haul, you know, overload
25 on this load, then it's going to be less, you know.

1 All the wood on the tract's going to get hauled
2 eventually, anyway.

3 Q And as far as mileage, Myers is paid by the ton,
4 unless it's over 40 miles. Is it 40 miles?

5 A Correct.

6 Q Okay. Unless it's over 40 miles one way, Myers is
7 paid by the ton, as well.

8 A Correct.

9 Q So, there's no incentive -- there's no downside,
10 from Myers' standpoint. You could load as much as
11 you wanted to on the truck and deliver it, and it
12 really doesn't make any difference to Myers Timber.

13 A It doesn't.

14 Q Now, when you're out on a tract, -- and I think
15 Mitch talked about this and you talked about it a
16 little bit. When you're out on the tract and you're
17 trying to -- You got a 30-acre tract, like uncle
18 Faulkenberry's tract, is it frequent that you would
19 decide where the logging roads were going to be, or
20 talk about these ruts, and so forth?

21 A You would want to give the logger all the informa-
22 tion that you had. If you've got a map, you know,
23 here's a road that's already in place; here's a
24 logging deck that's already in place. And you could
25 suggest to him what you think he ought to do. But,

1 really, I mean, he's going to do whatever he wants
2 to do. As far as where you set the deck, and all
3 that, the logger decides where to put it, because
4 he's the one that has to figure out how it's going to
5 work and how to get the wood to the deck.

6 Q Okay.

7 A You know, sometimes consultants or landowners,
8 like Mitch said, they'll want to have the logging
9 deck in a certain area; and we try to accommodate
10 them as best we can. But, you know, ultimately,
11 the logger's got to be the one to get in and out of it
12 and use it; so, he has to have it the way that he
13 needs to do it.

14 Q Okay. Are there times when you would have to
15 change the road they're using, or the property path
16 that they're using to get it to the deck, because of
17 ruts or runoff, or something like that?

18 A I guess that could happen.

19 Q I mean, have you ever had to redirect it and say, "I
20 want you to start using a different path to get to
21 the logging deck."?

22 A I don't know. I mean, I imagine that I have, but I
23 can't think of an instance right off the top of my
24 head.

25 Q Well, now, what -- When Mitch testified about ruts --

1 A He's talking about ruts in the woods, --

2 Q Right.

3 A -- with the skidders and the cutters.

4 Q That's what I'm talking about, too. I'm sorry.

5 A I thought you were talking about driving the log
6 truck into the deck to get loaded. Okay. So, we're
7 talking about two separate things.

8 Q So, tell me about the skidders and the loaders.
9 Now, tell me the difference between a skidder and a
10 loader.

11 A A loader loads the wood. A skidder brings the wood
12 to the deck, and the cutter cuts the wood.

13 Q So, with the skidder, then, in particular, do you
14 ever direct where the skidders are going to go;
15 what path they're going to use to get to the loading
16 deck?

17 A No, it's really left up to the equipment operator.

18 Q Well, when they're talking about the ruts -- when
19 Mitch was talking about these ruts, ruts from what?
20 I mean, if --

21 A If it's raining and the tract was starting to rut, then
22 we might, you know, decide that we're going to
23 move -- to stop cutting or move them off, if the
24 tract is too wet to cut.

25 Q Okay. Do you ever redirect it and say, "Hey, don't

1 go this way. It's making big ruts. Let's try higher
2 ground."?

3 A Yeah, we might would tell them to cut in a -- to try
4 cut in a different area where it's not rutted.

5 Q All right. And is it just cut in a different area, or
6 would you literally say, "Hey, you're dragging this
7 through here. You're making big ruts. I want you
8 to keep cutting there, but you need to go on across
9 this ridge."?

10 A Yeah.

11 Q Okay. And, I mean, things like that, those are
12 decisions that you, in doing your job, have to make.
13 You've got to be able to make those kind of
14 decisions.

15 A Yes.

16 Q I mean, because that's helping the landowner,
17 making sure that the landowner's happy. Is that
18 right?

19 A Right.

20 Q And then the other things about, you know, how
21 much stump you leave, and all that, that deals with
22 the landowner and your bottom line.

23 A Right.

24 MR. DOVE: Thank you.

25 MR. WILKERSON: Let me just ask a couple.

1 EXAMINATION - (By Mr. Wilkerson)

2 Q Your contract you had with Levister is an oral
3 contract. Right?

4 A Correct.

5 Q And, under that contract, he's required to cut the
6 timber from the tracts that you designate -- that
7 Myers Timber designates. Is that correct?

8 A Correct.

9 Q And he's legally contracted -- contractually
10 obligated to haul that wood to the designation that
11 Myers Timber designates. Is that correct?

12 A Yes.

13 Q Do you have any contractual right to tell him who
14 to hire?

15 A No.

16 Q Do you have any contractual right to tell him what
17 type of trucks to use?

18 A No.

19 Q Do you have any contractual right to tell him what
20 kind of other equipment to use?

21 A No.

22 Q Do you have any contractual right to tell him what
23 routes to take?

24 A No.

25 Q If you don't like the way he's performing the job,

1 the only remedy you have is to terminate the
2 contract. Is that right?

3 A Correct.

4 Q You can't tell him to use or not use a certain truck,
5 can you? You have no contractual right to tell him
6 that.

7 A No.

8 MR. WILKERSON: That's all I have.

9 MR. DOVE: Just a couple of follow-up from that.

10 EXAMINATION - (By Mr. Dove)

11 Q Based on -- If you're dealing with property that has
12 some environmental issues, maybe streams that are
13 close by or you're dealing with some area that the
14 ground stays wet a lot, and so forth, have there
15 been times when -- there's different ways to cut
16 trees and different equipment that you can use to
17 cut trees; may not be standard ways, but different
18 ways that you can cut trees. You don't' actually
19 have to use a skidder for that. What's the thing that
20 actually harvests the trees and cuts the trees off?

21 A A cutter.

22 Q A cutter. All right. Are there different type cutters?

23 A Yes.

24 Q Tell me the different type cutters.

25 A There's tract cutters and then there's regular

1 cutters that are on wheels that, you know, --
2 Actually, a tract cutter is kind of like a track hoe
3 that's got a cutter on it, or boom or head that goes
4 out and cuts it. We don't have any -- Myers Timber
5 Company or any of the loggers don't have any
6 cutters like that.

7 Q When you're cutting off property, based on the --
8 particularly with maybe in a sensitive area or close
9 to a sensitive area, have there been times that
10 you've had to tell people they had to cut it by hand,
11 that they couldn't use a cutter?

12 A No.

13 Q So, no time that they would actually use a chainsaw
14 to take something down versus a cutter.

15 A They can cut a tree with whatever they want to cut
16 it with.

17 Q So, you don't ever tell them, "Hey, I don't want you
18 getting a cutter up there." Or, "I don't want you
19 getting a track hoe up there, because it's going to
20 make too big a rut. You're going to have to use a
21 regular cutter with wheels on it, or something that's
22 not as heavy that's going to make big ruts."? You
23 never told anybody anything like that.

24 A No, I don't tell them what they've got to cut the
25 tree with.

1 A Or either move them to a different tract.

2 Q That's exactly right. So, you make decisions based
3 on how they're doing their work and you will tell
4 them what equipment they can drive in certain
5 places. Right?

6 MR. WILKERSON: Well, I'm going object to that.
7 He's answered that question three times.

8 MR. DOVE: Well, let him answer it again. Go
9 ahead.

10 BY THE WITNESS:

11 A I don't tell them where they can or cannot drive
12 their equipment.

13 Q I thought you just said that you have to stay 40
14 feet -- you have to have a 40-foot buffer.

15 A We flag a 40-foot buffer before the creek.

16 Q And if there's an area that's going to make a lot of
17 ruts, you tell them to stay out of there, too. Right?

18 A I don't know.

19 Q So, you don't know.

20 A I don't know. You're confusing me.

21 MR. WILKERSON: You keep asking -- I object.
22 You keep asking the same question. He's answered
23 it three or four times. Do you want a different
24 answer from the answer he's giving you?

25 MR. DOVE: He's giving me, "I don't know." Is

1 that your answer?

2 MR. WILKERSON: That was his last answer.

3 MR. DOVE: That's the whole point. That's the
4 whole point.

5 BY MR. DOVE:

6 Q So, is the answer you don't know or yes I have done
7 that; or no, I've never done that? This is as under-
8 oath testimony.

9 A Ask me the question again, please.

10 Q What do you understand the question to be?

11 A Do I tell the logger where he can or cannot operate
12 his equipment. Was that the question?

13 Q I said, in your sensitive areas right there, when
14 there's ruts being made or ruts that could be made.

15 A Do I tell them that he can't cut right there?

16 Q Yes, sir.

17 A Yes.

18 Q And you redirect them, when you've seen their
19 equipment making ruts.

20 A Yes.

21 MR. DOVE: Thank you. That's all the questions
22 I have.

23 MR. JORDAN: Nothing further.

24 MR. WILKERSON: We're done.

25 * * * * *(Concluded at 1:35 P.M.)* * * * *

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STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS
COUNTY OF CHESTER
2007-GS-12-333 and 334

STATE OF SOUTH CAROLINA
VS.
GEORGE ROGERS

CHESTER, SOUTH CAROLINA
SEPTEMBER 10, 2009
BEFORE THE HONORABLE BROOKS P. GOLDSMITH

APPEARANCES
FOR THE STATE: CHRIS TAYLOR AND DOUG BARFIELD
FOR THE PETITIONER: CARL GRANT
REPORTED BY: MICHAEL C. WATKINS
OFFICIAL COURT REPORTER

1 driving a log truck for Mr. Levister?

2 A Yes, sir.

3 Q And tell the jury if you will how much you got paid
4 per load working for Mr. Levister.

5 A \$35.

6 Q \$35 per load?

7 A Yes, sir.

8 Q And when you worked for Mr. Levister how many trucks
9 did he have, do you remember?

10 A Three.

11 Q Three trucks?

12 A Yes, sir.

13 Q And if there was something that needed to be repaired
14 on those trucks, what was the policy? Did you have to pay
15 for it out of your \$35 per load or did Mr. Levister pay
16 for it?

17 A Mr. Levister.

18 Q Let's say for instance there was something wrong with
19 the tires or brakes, who paid for that?

20 A Mr. Levister.

21 Q Anything wrong with the transmission, who paid for
22 that?

23 A Mr. Levister.

24 Q Any mechanical problems at all, was Mr. Levister, was
25 he the one that would take care of repairs?

1 A Yes, sir. He would tell me to bring the truck to his
2 house, I would take it to his house and when it was ready
3 he would call me or he would come and pick me up and tell
4 me it was ready.

5 Q Let me turn your attention then to approximately two
6 weeks before this accident on March 26, 2007. Did you
7 have a discussion with Mr. Levister about having the truck
8 serviced around that time?

9 A Yes, sir.

10 Q Take your time and tell the jury about that
11 discussion.

12 A Well, when we got off that Friday afternoon he told
13 me to bring the truck over to his house and he was going
14 to fully service it and when he finished he would call me
15 and tell me I could come and get it.

16 Q Did you take the truck to his house for it to be
17 fully serviced?

18 A Yes, sir.

19 Q And that was a Friday?

20 A Yes, sir.

21 Q How long did Mr. Levister keep the truck before
22 calling you to tell you it was ready to be put back into
23 action?

24 A He called me Sunday night and told me it was ready
25 and he would be to pick me up Monday morning to take me to

1 wood, which is where I was supposed to have been going.

2 But once he got there they told him to call back and tell

3 Mr. Levister not to send another truck because they was

4 broke down at the mill, so they gave me a load of wood to

5 come to Chester. I left the woods --

6 Q Before you leave, who loaded the truck?

7 A Mr. Levister's son.

8 Q Does he have some kind of heavy equipment mechanism

9 that loads the truck?

10 A Yes, sir.

11 Q And is he the one, Levister's son, that determines

12 how much to put on the truck?

13 A Yes, sir.

14 Q And is there anything in that 1988 Freightliner, any

15 kind of electronic device or anything that you can look at

16 on the dashboard in any kind of way to tell you how much

17 weight you have got on that truck?

18 A No, sir.

19 Q Who are you relying upon as to whether or not you are

20 properly loaded the before you leave the woods?

21 A The loader man.

22 Q And the loader man is Mr. Levister's son?

23 A Yes, sir.

24 Q All right. So tell the jury what happens when you

25 are fully loaded. What happens next?

1 Q '73. I'm sorry, I'm making you older than you are, I
2 apologize. But that's all you ever learned and that's all
3 you ever did.

4 A Yes, sir. May I say something?

5 Q No, sir. I have got to ask you a question.

6 A Okay.

7 Q The only other thing you would do to check the truck
8 if it had a load on it was to check your straps; is that
9 right?

10 A Yes, sir.

11 Q All right. And is it your testimony, Mr. Rogers,
12 that on the day this collision occurred on March 26, 2007,
13 there wasn't nothing wrong with the truck, is that your
14 testimony?

15 A Yes, sir.

16 Q And you had been driving it ten days straight before
17 this collision, and it's your testimony there wasn't a
18 thing mechanically wrong with that truck.

19 A Not as far as stopping wise and stuff.

20 Q Now, March 26th of 2007 you go to Bowater, you ended
21 up back over yonder at Kershaw.

22 A Yes, sir.

23 Q You had to wait because y'all were just starting a
24 job down there, is that correct? They had just cut the
25 road to get you in the woods, right?

1 A Yes, sir.

2 Q You have to wait for them to get that done and get a
3 load of wood cut to put on truck number one, right?

4 A Yes, sir.

5 Q Which ain't you, somebody else is hauling number one.

6 A Yes, sir.

7 Q And I think you told Trooper Lindler when you talked
8 to her that from like 10:00 to 2:00 down in Kershaw you
9 slept in your truck just waiting on them to get you a load
10 of wood.

11 A Yes, sir.

12 Q So you leave Kershaw about 2:00 and you're headed to
13 Chester Wood and I presume you come up 521 and go through
14 Lancaster.

15 A Yes, sir.

16 Q Go around the bypass, stop in Fort Lawn and get some
17 diesel.

18 A Yes, sir.

19 Q Texaco station on the right right there where you can
20 turn off and go up 21.

21 A And go up 21, right.

22 Q Head on through Fort Lawn. And I think on your
23 statement you said something about the chicken or the
24 turkey farm place, the Fort Lawn police officer was
25 sitting right there on Number 9 somewhere around Circle 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHESTER

Carlton Quinton as Guardian for
Timothy Quinton, a Minor under the
Age of Eighteen,

Plaintiff,

Case Numbers: 10-CP-12-00137

10-CP-12-00136

vs.

10-CP-12-00135

Myers Timber Company, Inc.,

10-CP-12-00134

10-CP-12-00133

Defendant.

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Alice Quinton and Carlton Quinton,

Plaintiffs,

Vs.

DEPOSITION OF CHARLES LEVISTER

Myers Timber Company, Inc.,

ROCK HILL, SOUTH CAROLINA

Defendant.

JANUARY 5, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

Carlton Quinton as Personal
Representative of the Estate of
Hannah Nicole Quinton, deceased,

Plaintiff,

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Vs.

REPORTER: Robbie E. Moskau, CCR

Myers Timber Company, Inc.,

Defendant.

DALLAS REPORTING

SERVING THE CAROLINAS FOR OVER TWENTY-FIVE YEARS

ROCK HILL, SOUTH CAROLINA

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1 A I mean, I know -- Because, I know when -- when-
2 ever they come out there and showed my dad where
3 to cut -- whenever they would come out there and
4 show him where to cut, I mean, if it would be on the
5 weekend, I'd be riding with my dad.

6 Q Okay.

7 A But, as far as really -- my dad having any -- them
8 having anything to really do with my dad's company,
9 it was -- No, they showed him where to cut, and
10 that was it.

11 Q All right.

12 A And then, they didn't come out there anymore after
13 that. Before the job, like before they, you know,
14 started cutting on a tract, they come out there and
15 showed us -- they'd mark the lines; and, when the
16 job was over, they inspected it. And that's the only
17 time we ever seen them.

18 Q But you just said you weren't out on that tract.

19 A No.

20 Q So, how do you know whether or not they were out
21 there?

22 A Well, I mean, because, like I said, I rode with my
23 dad. Because, on the weekend, when they showed
24 the -- whenever they showed them, I would ride
25 with my dad.

1 Q Okay.

2 A I mean, they -- Me and my brother was talking this
3 morning and he said they might pop up every now
4 and then, but you really didn't see them.

5 Q And you were talking this morning, also, to Mr.
6 Wilkerson?

7 A Who?

8 Q This gentleman --

9 A My brother talked to him.

10 Q Did you speak with him?

11 A He asked my name and asked if he was my brother,
12 and I said, yes, I was.

13 Q Any other conversation you've had with Mr.
14 Wilkerson?

15 A No, sir.

16 Q So, let me get this straight. You were not out on
17 the tract of land working for Myers Timber on a
18 day-to-day basis.

19 A No, sir.

20 Q The only time you would have any contact with
21 Myers Timber would be on a weekend.

22 A Yes, sir.

23 Q Tell me what you recall the first time you rode with
24 your father and met with people from Myers Timber.

25 A I can't really remember, to tell you the truth.

1 A No, sir.

2 Q Did you know anything about your father's
3 insurance policies that he had on the business or
4 the trucks?

5 A No, sir.

6 Q So, you don't know whether or not he had any
7 additional umbrella policy that would cover --

8 A I don't know what all he had. I mean, my brother
9 would know more about that than I do.

10 Q Did you ever talk to your father about the work he
11 was doing for Myers on, --

12 A I mean, as far as --

13 Q -- before this accident?

14 A As far as cutting wood, that's it. I mean, that's all
15 my dad really done was cut the wood.

16 Q What was your understanding of who owned the
17 wood?

18 A The owner of the wood would be whoever Myers --
19 That would normally be between Myers and whoever
20 they got the wood from. My dad was his own
21 independent company. He paid for his own stuff. I
22 mean, the only thing he done was cut the wood. So,
23 I mean, whoever owned the wood, it would be
24 between Myers and whoever owned it previously
25 before him, or however they did that.

1 know, were any of his help that he ever had a
2 problem with, or anything?

3 A My dad's a really easy-to-get-along-with person. He
4 got along with everybody.

5 Q Do you ever -- Because you live in Chester, -- Now,
6 I tend to think Chester is a small place. I know it's
7 spread out. Do you ever run into George Rogers?

8 A No, sir.

9 Q So, you don't have that sort of friendship or
10 relationship, when you see him out in Chester
11 somewhere?

12 A No, sir. I mean, I know where he lives. I go by his
13 house every now and then; besides that, no, sir.

14 Q When you went to the wreck that day, who all was
15 there that you recognized?

16 A I can't say who all was there. The only person I
17 really know was me and my aunt and a bunch of
18 people just standing around.

19 Q Do you know if, after this thing, that your dad had
20 any conversations with anybody from Myers about
21 the wreck?

22 A Not that I know of. I mean, really, I mean, the
23 wreck was on my dad. I mean, I don't really see
24 why he would really talk to Myers about anything of
25 it.

1 Q Okay.

2 A Because, I mean, the only thing Myers had anything
3 to do with was the timber; and it went to the wood
4 yard, anyway, so --

5 Q Now, has anybody represented Myers, other than
6 Mr. Wilkerson today -- I mean his lawyer. Anybody
7 representing Myers have any discussions with you
8 or your brother or anybody?

9 A I haven't talked with anyone, besides y'all, to tell
10 you the truth.

11 Q Do you know if your brother has?

12 A No, sir. I mean, he works every day. We really --
13 We ain't really thought nothing of it the last -- ever
14 since my dad died.

15 Q Now, where does your brother work?

16 A My brother works for Wilks Logging.

17 Q Wilks Logging. What does he do?

18 A He runs a loader.

19 Q And as far as -- Did your dad ever represent to
20 you -- talk to you about the responsibility for the
21 wreck, about who was responsible, why the wreck
22 happened?

23 A No, sir. I mean, he tried his best not to think
24 about it, because, I mean, I know it seems like -- I
25 know, for my dad, I mean, he worried real bad

1 Q You mentioned -- on the day of the accident -- you
2 mentioned five employees, Dog, Bobby, Amos,
3 George Rogers and Willie. Who hired those people?

4 A My dad hired them.

5 Q Do you know who had the right to fire them?

6 A My dad.

7 Q Who paid them?

8 A My dad.

9 Q Did Myers Timber have anything to do -- anything,
10 whatsoever, to do with the hiring of these people?

11 A No, sir.

12 Q Did Myers Timber have any control over these
13 people?

14 A No, sir.

15 Q Who paid these people?

16 A My dad.

17 Q And whose equipment was used to harvest the
18 timber?

19 A My dad's.

20 Q Did your dad pay these people by the hour, or do
21 you know?

22 A I'm pretty sure that they got paid by the day. But,
23 I'm not a hundred percent sure. That's something
24 my brother could answer.

25 Q Did Myers Timber have anything to do with your

1 dad's business, other than to show him where to
2 cut the timber and tell him where to haul the
3 timber?

4 A No, sir.

5 Q Whose truck hauled the timber?

6 A At this time, my dad's truck. My dad owned all the
7 trucks.

8 Q Did your dad own all the equipment that was used
9 to harvest and load the timber?

10 A Yes, sir.

11 Q Was any of the equipment or the trucks furnished
12 by Myers Timber?

13 A No, sir.

14 Q Who supervised these employees that we've just
15 mentioned?

16 A My dad. You know, my dad, he worked right along
17 with them, so --

18 Q Right.

19 MR. WILKERSON: Okay. That's all I have,
20 Charles. Thank you.

21 MR. JORDAN: Just a follow-up.

22 EXAMINATION - (By Mr. Jordan)

23 Q It's my understanding that you did not work for
24 your father until after this accident.

25 A Yes, sir.

1 Q And so, you've answered some questions for Mr.
2 Wilkerson about Myers Timber and the relationship
3 that your father had on the job with Myers Timber.

4 A Yes, sir.

5 Q Is it fair to say that you have no firsthand
6 knowledge about any type of relationship your
7 father had with Myers --

8 A Yes, sir.

9 Q Let me finish my question, please. Is it fair to say
10 that you don't have any firsthand knowledge about
11 the relationship your father had with Myers Timber
12 or any employee at Myers Timber while he was on
13 that jobsite and working and cutting logs, because
14 you were not there?

15 A As far as the questions he asked me, I mean, who
16 owned the equipment, who owned everything, I
17 mean, I know firsthand that was my dad.

18 Q Okay.

19 A I mean, that's really -- I mean, my dad really didn't
20 have anything to do with Myers, like I told you
21 earlier, I mean, besides he just showed them what
22 land to cut. And, I mean, that's really basically it.

23 Q But you weren't on the jobsite.

24 A No, sir.

25 Q Is it fair to say that you don't know what conversa-

1 MR. WILKERSON: Okay. Go ahead.

2 EXAMINATION - (By Mr. Dove)

3 Q Did you understand that on the day, when this
4 wreck happened, that the load that was involved --
5 that George Rogers was driving had been redirected
6 from New South to Chester Wood? Did you
7 understand that?

8 A No, sir.

9 Q So, you don't know who made that decision about
10 redirecting the wood from New South to go to
11 Chester Wood.

12 A I mean, if it got redirected like that, I mean, I'm
13 pretty sure that would've been my father's decision.
14 Because, I mean, he's the one that called -- If
15 something went wrong, he's the one that called
16 "you do this or do that."

17 Q But you don't know anything about the load being
18 redirected.

19 A No, sir.

20 Q Do you know anything about the wood on that truck
21 that Rogers was driving being reloaded or cut after
22 it was on the truck, after it was in the field, that
23 the load is reloaded in some way or the wood being
24 cut after it was on the truck?

25 A You mean after the wreck?

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Carlton Quinton as Guardian for
Timothy Quinton, a Minor under the
Age of Eighteen,

Plaintiff,

vs.

Myers Timber Company, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

Case Numbers: 10-CP-12-00137
10-CP-12-00136
10-CP-12-00135
10-CP-12-00134
10-CP-12-00133

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Alice Quinton and Carlton Quinton,

Plaintiffs,

Vs.

Myers Timber Company, Inc.,

Defendant.

DEPOSITION OF CHUCK LEVISTER

ROCK HILL, SOUTH CAROLINA

JANUARY 5, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

Carlton Quinton as Personal
Representative of the Estate of
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Plaintiff,

Vs.

Myers Timber Company, Inc.,

Defendant.

REPORTER: Robbie E. Moskau, CCR

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1 A And I believe we had another contractor there. I
2 don't know his last name. I know his first name is
3 Jason, but I mean, he didn't work for us every day.
4 He was just getting a load of wood, I believe; but,
5 I don't think he ever got that load of wood. But, I
6 don't know his last name. It was Jason something.
7 Offhand, that's all I can think of right now.

8 Q Was anyone from Myers Timber out onsite that day?

9 A No, sir, I don't believe so. You didn't see them too
10 often. You'd see them every now and then, and
11 that was it.

12 Q When you say see every now and again, what do
13 you mean by that?

14 A They'd take us out and show us a tract of wood and
15 Daddy would determine whether or not he wanted to
16 cut it, or not. He'd show us basically the boundary
17 lines and then they might pop up. And, after we'd
18 get it started, they might pop up once or twice
19 while we was cutting that wood. They just come
20 out there and check and see -- make sure that we
21 wasn't across the line, or make sure that we was
22 cutting the wood right, and that was it. I mean, you
23 didn't really see them often.

24 Q When you say making sure you're cutting the wood
25 right, what do you mean by that?

1 Q Okay.

2 A I was wondering why he needed to be here, is what
3 I'm wanting to know. Because, he had nothing to
4 do with nothing right here, concerning the wreck,
5 anyway. He was still going to school, at the time.

6 Q And your brother wasn't working for your father, at
7 the time.

8 A No, sir.

9 Q He had never been out on that jobsite.

10 A Oh, I ain't going to say he ain't never been out
11 there, now. He'd went out there on the weekends,
12 and stuff like that, fiddle-farting around; but, he
13 wasn't no worker like I was. I worked every day
14 and he didn't. He went out there, picking around
15 with stuff.

16 Q Did you personally have any conversation with
17 anyone from Myers Timber about what y'all were
18 going to be doing on that site, at the time, the site
19 that you were working on at the time of the wreck?

20 A What do you mean?

21 Q Did anyone from Myers Timber talk to you about the
22 work that needed to be done on that tract?

23 A No, sir, I don't believe so.

24 Q What's your understanding of the business that
25 Myers Timber was in?

1 A They buy wood, then they got contractors under-
2 neath them that go out and cut the wood for them.
3 They just go to them and buy wood and hire
4 contractors to cut it for them, and sell the wood to
5 wood mills.

6 Q And how does Myers Timber make their money?

7 A Through the profit that the wood -- I reckon the
8 wood mill pays for the wood. They'll get their cut
9 out of whatever the load brings. They'll get their
10 cut out of it, and then they'll pay whoever cut it.

11 Q So, Myers Timber is in the business of buying and
12 selling --

13 A Wood.

14 Q -- wood.

15 A Yeah, I would say. That's how I'd put it.

16 Q When Myers Timber would buy timber, talk to the
17 landowner, was there ever a time when they told
18 you or your father, you know, "We want your
19 loading site to be here."

20 A They can make a suggestion, if they think this is a
21 good spot, or this over here is a good spot. But, if --
22 Like my daddy, for instance, if he didn't think the
23 trucks would be able to get out of that hole or this
24 hole, he could put the load wherever he wanted to.
25 It didn't matter.

1 Q Did they ever make any suggestions, out on this
2 tract, about where to have the loading site or how
3 to cut the wood?

4 A I don't know.

5 Q They would've dealt with your father on that.

6 A Yeah, mostly everything would've been dealt with
7 Daddy.

8 Q Was there ever a time when any employees from
9 Myers would help load?

10 A Oh, they never got on a loader. They're always in a
11 pickup truck. They'd come out there in real nice
12 clothes and talk to you. But, that's it. They never
13 got on a piece of equipment.

14 Q Do you recall -- the day the accident happened --
15 that George Rogers was driving one of the trucks?
16 Is that correct?

17 A Yes, sir.

18 Q Do you recall his load being redirected from New
19 South to Chester Wood?

20 A I honestly don't know. It's very possible, yes, sir.
21 But, I don't know. Because, we was in Kershaw; so,
22 you would assume that that wood could've been
23 going to New South, if it's going back to Chester.
24 But, I don't know which way they're supposed to go.

25 Q Had any loads been taken to New South?

1 can't remember if he was still working for us, or
2 not, at the time. Because, there was a time he quit
3 and then a time he come back and went to work for
4 us. He was in and out.

5 Q Do you recall whether or not anyone else ran a
6 loader and helped load George Rogers' truck that
7 day?

8 A No, sir, I don't believe it was, not from what I can
9 see in my head, the picture of who was on the dock.
10 But, I remember I was on the dock and wouldn't
11 none of them been on it.

12 Q Okay.

13 A Had to have been either me or my daddy.

14 Q But you do recall that this load was going to
15 Chester, --

16 A Yes, sir.

17 Q -- rather than New South.

18 A Yes, sir.

19 Q But you don't recall why.

20 A No, sir.

21 Q And you don't recall anyone from Myers Timber
22 being out there at the time.

23 A No, sir. I don't recall seeing none of them out
24 there.

25 Q When you had to measure the logs from Chester,

1 tell me how you would do that.

2 A You'd have a big tape, about a 75 foot tape and
3 you'd load -- You got specific measurements you'd
4 go. Like nowadays, I think it's seventeen-six, then
5 you got twenty-something foot, then you got thirty-
6 something foot, and you got forty-something foot.
7 You just measure that tree, where that tree was
8 straight and looked good, and you measure it. And
9 then, when it started getting real knotty or cat face
10 or forked, or something, then you'd cut it off there.
11 But you got to go to that specific length. Chester
12 won't -- they want a specific length. There's six or
13 seven different lengths they give you, and you got
14 to make one of those marks and you got to have
15 them -- On a big log, you got to have an eight inch
16 top; and, on a small log, you got to have a seven
17 inch top. On a short log, you got to have an eight
18 inch top. There's specific marks they want --
19 specific lengths, they want a specific size top.

20 Q If it were going to New South, you don't have those
21 rules, do you?

22 A You cut it off seven inches -- as far out as you go,
23 seven inches. I mean, the same as with no knots
24 and forks and cat faces, and stuff like that. But,
25 you didn't have to measure that.

1 didn't care what else they had to say. I just wanted
2 to cut some good wood.

3 Q Did your father show you -- or, show the other
4 people on the site where to cut?

5 A Yeah, usually he would tell the cutter man, or
6 something, basically where he wants to put the
7 dock; and tells them to cut it out right there. And
8 Daddy would take and push it out and make a deck
9 for us. And after that, we'd just go in.

10 Q Do you know if Myers had told your father where to
11 put the deck on that site?

12 A I don't know if he did or if he didn't.

13 Q You didn't --

14 A I wasn't there, if he did.

15 Q Were you present for any of the conversations that
16 your father had with either Freddy Myers?

17 A I was there, but they were probably on the other
18 side of the building over yonder somewhere, talking.
19 Well, usually, I was running the loader when they --
20 If Freddy was to come around and he had to talk to
21 him, I'd be running the loader and they'd be down
22 there talking. I never got in on the conversation
23 with them.

24 Q Was it Mitch or Freddy that would come and speak
25 with your father?

1 you cleared up.

2 A The whole tract?

3 Q I mean, in a day.

4 A In a day. Well, my daddy and us -- I'd say about
5 12 loads a day, 12, 15 loads a day.

6 Q Okay. Out of that average, about how many of
7 those things would actually be technically over-
8 loaded?

9 A I don't know. Sometimes you'd come -- they'd
10 complain they'd be under-loaded, and sometimes
11 they'd be overloaded. And sometimes, they'd be
12 right there at it, or pretty much within a pound, or
13 so, of being right at it, and Daddy was happy.

14 Q Now, would the big boss man ever say anything
15 about how much load you'd have on a truck when it
16 was overloaded or under-loaded or --

17 A No.

18 Q So, it didn't matter to them.

19 A No.

20 Q Okay.

21 A As long as all the wood was loaded, that's all they
22 wanted; to make sure all the wood was running
23 through. They wouldn't care if you put four trees
24 on a truck and sent it up the road. Didn't matter
25 to them.

1 Q All right. Does Williams Forest Products or Myers
2 or the big boss man, do they ever give direction
3 about what roads to take -- about how to drive
4 somewhere and what roads you have to take; you
5 know, they said this road to go here and this road
6 to go there.

7 A No, they don't tell you how you have to. They just
8 tell you, like, this road goes to this wood yard and
9 this road goes to that one. But they don't tell you
10 you got to specifically drive down this road or that
11 road. The truck driver -- or, my boss man,

12 Crawford, would tell his truck drivers that this is
13 the best route to take; but, they wouldn't tell you
14 how to -- how you're going to take it to the wood
15 yard.

16 Q Would they have the right to do that? Would the
17 big boss man have the right to do that?

18 A No, I wouldn't think so.

19 Q Now, how about how much wood would go on a
20 truck? Would they have a right to do that, tell you
21 how much wood -- you know, you got to keep it
22 within this --

23 A No, not really. I mean, I ain't never heard anyone
24 say anything about it.

25 Q Okay. Do they -- How about which drivers can

1 drive? Maybe somebody who might not have a
2 great driving record, or something like that, would
3 the big boss man have anything to say about that?

4 A No, I don't think so. That's what -- Crawford
5 handles all that. They have some say-so, but they
6 don't have it all.

7 Q Well, now, tell me -- give me and examples of some
8 say-so.

9 A Like -- It's hard to explain. I reckon, saying the
10 wood's going out there to this wood yard and this
11 wood's going to this wood yard. But specifically,
12 they don't really -- Well, I don't think they say
13 much. Now, I'll have to rephrase my question. I
14 mean, they come out there and they tell you what
15 wood needs to go where at.

16 Q Okay.

17 A You know, your logs got to go here, your pulpwood's
18 got to go here. But, I've seen it a number of times
19 out here, when I'm working with Crawford, if this
20 wood yard's backing up, we'll turn around and
21 Crawford, I assume, will get on the phone and call
22 them and then we'll get this wood and go some-
23 where else. But, say-so, now, I wouldn't say they
24 would have a lot of say-so. I just reckon you get
25 that feeling, because they're -- you call them the

1 A No, sir.

2 Q Okay.

3 A Not that I know of.

4 Q That was the first time I heard it, and I was just
5 trying to find out --

6 A May've been me trying to say Dog and something
7 else.

8 Q Okay, that's probably what it was. Thank you.

9 MR. DOVE: That's it. Thank you.

10 EXAMINATION - (By Mr. Wilkerson)

11 Q Chuck, my name's Forest Wilkerson. I represent
12 Myers Timber. And we met right before these
13 depositions began. I talked to you briefly. I'm
14 going to ask you a few questions.

15 A There's been a lot of questions.

16 Q You mentioned, of course, under the agreement
17 between Levister Logging and Myers Timber, Myers
18 controlled where the timber was harvested and they
19 showed Levister where to cut. Is that correct?

20 A They showed them the tract of wood, yeah.

21 Q And they controlled where it was delivered. Is that
22 correct?

23 A Specific log -- wood yards, yeah; specific logs goes
24 different places.

25 Q And if Myers was dissatisfied with the way the land

1 was being cut, would they take that up with the
2 individual workers or with your dad, who owned the
3 company?

4 A Well, sometimes, they could talk to like a skidder
5 operator if he seen them going down there and he
6 was skinning up too many trees.

7 Q Uh-huh (affirmative).

8 A And he'd stop them and just ask them -- you know,
9 just watch the trees, or something. But, he didn't
10 have to listen --

11 Q But they had no right to control the individual --

12 A No, he had no right; no, sir. If he wanted to get
13 something done and basically try to stop them, he'd
14 just go talk to Daddy and maybe Daddy could enforce
15 something on them; he couldn't.

16 Q Your daddy could enforce it, because he had the
17 right to hire or fire --

18 A Yeah.

19 Q -- these workers. Is that correct?

20 A Yes, sir.

21 Q Of course, Myers did not have the right to hire or
22 fire any of Levister's workers, did he?

23 A No, sir.

24 Q And when you were working, did Myers have any
25 right to control what you did or what your other

1 employees did?

2 A No, sir.

3 Q Who did have the right to tell you what to do or
4 what not to do?

5 A My daddy.

6 Q And is that because he was the owner of the
7 company?

8 A Yes, sir.

9 Q Who had the right to fire you?

10 A My daddy.

11 Q Did Myers have that right?

12 A No, sir.

13 Q Who owned all the equipment -- the equipment that
14 y'all used on this Faulkenberry tract to harvest and
15 deliver the timber?

16 A My daddy owned it all.

17 Q To your knowledge, did Myers own any equipment
18 that's used in harvesting and/or delivering timber?

19 A No, my daddy owned everything out there.

20 Q Who had the right to say what equipment was going
21 to be used in the harvesting and delivery process
22 that Levister was doing?

23 A My daddy.

24 Q Did Myers have any say-so in that?

25 A No, sir.

1 Q Who had the right to say how the trucks were loaded
2 and how much timber was put on each truck? Who
3 had the right to make that decision?

4 A My daddy.

5 Q Did Myers have any say-so in that?

6 A No, sir.

7 Q Although Myers paid Levister Logging, based on the
8 shortest route from where the timber was harvested
9 -- Well, let me ask you this. Did Myers pay Levister
10 Timber based on the shortest route from where the
11 timber was harvested to where it was delivered?

12 A Yeah, he paid them the trip. Sometimes, if it was
13 certain buyers, they'd pay a certain fee; and then,
14 if it went beyond that, they'd probably get a little
15 extra and call it fuel mileage.

16 Q If it went over 40 miles?

17 A Yeah, something like that.

18 Q But, you -- Could the Levister employees take any
19 route they wanted to?

20 A They could drive anywhere. It didn't make no
21 difference. Like sometimes, like, if they left late in
22 the evening, they'd take it home with them first;
23 then, they'd get up early in the morning, then go.
24 They didn't have to go -- They went the way they
25 thought was the best.

1 Q So, Levister controlled the route that the drivers
2 took. Is that correct?

3 A Yes, sir.

4 Q And, of course, Levister was in an entirely different
5 business from Myers, where Myers was in the
6 business of buying and selling timber and Levister
7 was in the business of harvesting and delivering
8 timber. Is that correct?

9 A Yes, sir, that's basically the whole thing right there.
10 They bought and sell; Daddy would cut it and
11 delivered it, basically.

12 Q Okay. Does it take some skill to -- some degree of
13 skill or ability to harvests and deliver timber?

14 A Yeah, it takes some skill. I mean, you don't have to
15 be the sharpest tool in the shed, but you just got to
16 know what you're doing. You got to be very careful,
17 too. That's another thing.

18 Q Do you recall -- When this accident occurred, y'all
19 were harvesting on the Funderburk (sic) tract. Do
20 you recall how long -- the total amount of time it
21 took to -- on the Funderburk (sic) tract, how long
22 y'all were out there?

23 A I do not know how long we was there.

24 Q Can you give me an estimate?

25 A Not really, because -- I don't know. I can't

1 remember how big the tract was.

2 Q Would it have been a matter of weeks, as opposed
3 to a matter of months?

4 A Yeah, it would be different --

5 Q Probably less than a month?

6 A It usually -- If it was a decent size tract, it would
7 take a month, month and a half.

8 Q Okay.

9 A Decent size tract. Now, you got some little small
10 tracts, and it would take you no time to zip through
11 it. It just depended on what kind of wood and how
12 big the tract is that determines how long it's going
13 to take you to cut it.

14 Q The agreement between Myers and Levister Logging
15 entailed Myers telling Levister where to cut and
16 where to haul the timber to. Is that correct?

17 A Say that again for me.

18 Q The agreement between Levister and Myers Timber,
19 under that agreement, Myers controlled -- told
20 Levister where to cut?

21 A Oh, yeah, he'd show them the tract of wood.

22 Q And where to haul it to.

23 A Yes.

24 Q And, actually, Levister controlled everything else
25 about the cutting and hauling. Is that correct?

1 A Yeah, he determined where you're going to cut,
2 where you're going to put what, where you're going
3 to start at, what kind of wood he's going to start
4 cutting. That was all Daddy's decision.

5 Q You stated, at one time, you ran a crew for your
6 father, is that right; and y'all split it up into two
7 crews?

8 A Yes, sir.

9 Q Do you remember who the timber owner was, when
10 you ran a crew; or, there may've been several of
11 them?

12 A I think it was two or three tracts I cut by myself.
13 Well, I didn't cut by myself. I had a crew and we
14 was working at a certain site. I remember one in
15 Richburg. I think we had a clean-up crew for Daddy
16 somewhere. -- I mean, a site.

17 Q Uh-huh (affirmative).

18 A I can't remember exactly where that site was. I
19 remember having to clean it up for him. And then,
20 I think it was shortly after that, that's when we
21 ended up getting back together, because it was
22 getting bad.

23 Q Right.

24 A You know, the wood production wasn't up; so, we
25 ended up having to stick everything back together.

1 trying to make money. And usually, everybody
2 gets along. So, if you got a suggestion, or
3 something, usually you can talk to people. Like, if
4 Myers was to say something, I mean, you would
5 listen out of courtesy, and everything, and do what
6 he said, probably; but, he didn't have the authority.
7 Like he couldn't demand of you to do this certain
8 thing.

9 Q To your knowledge, did anybody -- any Myers Timber
10 employees have take part, in any way, in cutting
11 down the trees?

12 A No, they never run any equipment.

13 Q Did they ever take part, in any way, in loading the
14 trucks?

15 A Huh-uh (negative).

16 Q Did they ever take part, in any way, in delivering
17 the timber to the mills?

18 A No, sir.

19 Q I believe you've already answered this question,
20 but Myers, under its agreement with Levister, they
21 had the right to tell you where to cut and where to
22 take the timber. But, they did not have the right to
23 exercise any control over the details of the work,
24 did they?

25 A No, they just basically showed you where to cut,

1 where it went to; and from there, it was on you.

2 Q And although they checked on the site -- Myers
3 people checked on the site, from time to time, they
4 did not have the authority, nor did they supervise
5 the day-to-day operation of Levister. Did they?

6 A No, sir. He just popped up every now and then.
7 You'd see them here and yonder, and that was it.

8 Q Did you or your father, or any of the other
9 employees, have the impression or concession that
10 they were working for Myers, that Myers was the
11 employer?

12 MR. JORDAN: Object to the form of the question.

13 BY THE WITNESS:

14 A You say did we think that we worked for them?

15 Q Yes.

16 A No, we knew we worked for Daddy.

17 Q And, of course, your father had the power to control
18 the details of the work to be performed by Levister
19 employees. Did he not?

20 A Yes, sir.

21 Q And Levister Company determined the mode and
22 manner of how it was going to harvest the timber
23 and how it was going to deliver the timber. Is that
24 correct?

25 A Yes.

1 MR. WILKERSON: That's all I have. Thank you.

2 MR. JORDAN: Got a few follow-up.

3 EXAMINATION - (By Mr. Jordan)

4 Q You said that the employees of Myers, Freddy Myers
5 or Mitch Stines, would pop up on the scene.

6 A Uh-huh (affirmative).

7 Q Why would they pop up on the scene? -- or, the site?

8 A Oh, they was just making sure you aln't crossed the
9 boundary lines, or nothing like. They'd just pop in
10 from time to time.

11 Q And if you were across the boundary lines, what
12 would they do?

13 A Well, if they'd tell you you'd done crossed this, that
14 would be bad.

15 Q But you don't have to listen to them.

16 A Oh, you don't have to. I mean, you can go down
17 and cut all the wood you want to; but, it's going to
18 be bad. It's going to be real bad.

19 Q So, if the big boss man comes in and tells you, "You
20 don't need to cut past that line," you better listen to
21 them, or it's going to be bad.

22 A He's going to show you where the boundary line is.
23 He's going to tell you, "This is the tract that we
24 bought." And then, we go in there and we cut that
25 tract. We don't go in there and cut somebody else's

1 tract, because there's going to be a lawsuit from
2 whoever owns that. They're going to come in there
3 and they're going to charge you so much for each
4 stick of wood you done cut off their property.

5 Q And that landowner's probably going to sue you and
6 Myers Timber and anybody else.

7 A They're going to sue everybody and get it, unless
8 they can work out something. Like, I don't know,
9 just saying if Daddy was across the line, he'd pay
10 them for them trees he cut.

11 Q If Myers Timber's telling you where to cut, you
12 should listen to them; shouldn't you?

13 A Yeah, you should.

14 Q And what other reason would be that they'd pop up
15 on the site?

16 A They'd check the load sheets and see how many
17 loads is going on, how many load of logs has went
18 out. They're just seeing how much has done left.

19 Q And why is that important?

20 A Because that's how we make our money.

21 Q That's how Myers makes their money.

22 A Uh-huh (affirmative).

23 Q Myers relies on Levister Logging to make money.

24 A They rely on us to get the wood out of there.

25 Q Because, Myers is in the business of buying and

1 selling wood.

2 A Uh-huh (affirmative).

3 Q Is that right?

4 A Yes, sir.

5 Q And Myers can't make any money unless their wood
6 gets to the mill, can they?

7 A I don't think so.

8 Q So, Myers is in the business of buying and selling,
9 and they can't sell until they get it to the mill.

10 A Yes, sir..

11 Q And Myers relies on you, as part of their business,
12 to get that wood to a mill.

13 A Yes, sir, I would say.

14 Q And if y'all aren't getting the wood to the mill, Myers
15 isn't going to make any money.

16 A No, sir.

17 Q So, the reason they pop on the scene -- on the site
18 is they've got a financial interest in the work that
19 you do.

20 MR. WILKERSON: I object to the form of that
21 question.

22 BY MR. JORDAN:

23 Q You can answer the question.

24 A I'm confused.

25 Q Well, Myers has a financial interest in that wood.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

IN THE COURT OF COMMONS PLEAS

Carlton Quinton as Guardian for)
Timothy Quinton, a Minor under the)
Age of Eighteen,)

Plaintiff)

-vs-)

Myers Timber Company,)
Inc.)

Defendant)

Case Numbers: 10-CP-12-00137
10-CP-12-00136
10-CP-12-00135
10-CP-12-00134
10-CP-12-00133

AFFIDAVIT OF FRED MYERS

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

ALICE QUINTON AND)
CARLTON QUINTON,)

Plaintiff)

-vs-)

MYERS TIMBER COMPANY,)
INC.)

Defendant)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

Carlton Quinton as Personal)
Representative of the Estate of)
Hannah Nicole Quinton, deceased,)

Plaintiff)

-vs-)

Myers Timber Company,)

Inc.	)
	)
Defendant	)
STATE OF SOUTH CAROLINA	)
	)
COUNTY OF CHESTER	)
	)
TAYLOR CHERRY, A MINOR	)
UNDER THE AGE OF 14 YEARS,	)
BY AND THROUGH HER	)
MOTHER AND NATURAL	)
GUARDIAN, JANE CHERRY,	)
	)
Plaintiff	)
	)
-vs-	)
	)
MYERS TIMBER COMPANY,	)
INC.	)
	)
Defendant	)
STATE OF SOUTH CAROLINA	)
	)
COUNTY OF CHESTER	)
	)
JANE CHERRY, PERSONAL	)
REPRESENTATIVE OF THE	)
ESTATE OF NICHOLAS WAYNE	)
CHERRY,	)
	)
Plaintiff	)
	)
-vs-	)
	)
MYERS TIMBER COMPANY,	)
INC.	)
	)
Defendant	)

Personally appeared before me, Fred Myers who, after being duly sworn, deposes and says:

1. Myers Timber Company, Inc. is a corporation and on the date of the subject accident, March 26, 2007, I owned 50% of the stock and Mitch Stines owned 50% of the stock. On the date of this accident, we operated the company together as joint owners and had no employees.
2. On the date of this accident I had an oral contract with Charles A. Levister d/b/a Levister Logging whereby I agreed to pay Levister to harvest timber that I purchased from third parties and transport it to the plant that had purchased the timber from Myers Timber Company, Inc.

Under the terms of the contract:

1. Myers Timber had no control and exercised no control over how the timber was cut, loaded or hauled.
2. Myers Timber instructed Levister where to harvest the timber (the boundary lines of the tract to be harvested) and where to deliver the timber (the plant of the purchaser).
3. Myers Timber paid Levister \$14.00 per ton to haul the timber 40 miles or less from the harvesting site. Myers Timber paid Levister an additional \$.10 per mile per ton if the delivery site was more than 40 miles from the harvesting site.
4. Levister furnished all equipment necessary to harvest and haul the timber; Myers Timber owned no such equipment and furnished Levister with no such equipment whatsoever. Furthermore, Myers Timber owns no real estate.
5. Levister had the right under the contract to haul the timber any route he elected to use however the pay to Levister by Myers was based upon the shortest route.

METHOD OF PAYMENT

Myers paid Levister as set forth above. No other compensation was paid to Levister or his employees.

FURNISHING OF EQUIPMENT

Levister furnished all equipment necessary to harvest and deliver the timber; Myers furnished none.

RIGHT TO FIRE

Myers had no right to fire Rogers or any other employees of Levister.

WORKER'S COMPENSATION COVERAGE

Upon information and belief Levister furnished worker's compensation coverage for his employees, including Rogers, through Forestry Mutual Insurance Company.

CONTROL EXERCISED

The only control Myers exercised over the work done by Levister was where the timber was harvested and where it was delivered.

TRADITION

On March 26, 2007 Levister was engaged in a distinct occupation and business as a logger that required equipment designed to harvest and haul timber and required expertise.

SUPERVISION

Myers provided no supervision of the work done by Levister's employees.

DURATION

Myers entered into its contract with Levister on March 2, 2007.

ATTITUDES

The agreement between Myers and Levister was that Levister would operate as an independent contractor. In fact, on March 26, 2007, Myers had contracts not only with Levister but with approximately 8 other logging companies.

/s/
FRED MYERS

Sworn to me this
_____ day of August, 2010.

/s/
My Commission expires: _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

IN THE COURT OF COMMONS PLEAS

Carlton Quinton as Guardian for)
Timothy Quinton, a Minor under the)
Age of Eighteen,)

Plaintiff)

-vs-)

Myers Timber Company,)
Inc.)

Defendant)

Case Numbers: 10-CP-12-00137
10-CP-12-00136
10-CP-12-00135
10-CP-12-00134
10-CP-12-00133

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

**AFFIDAVIT OF
CHARLES EUGENE LEVISTER**

ALICE QUINTON AND)
CARLTON QUINTON,)

Plaintiff)

-vs-)

MYERS TIMBER COMPANY,)
INC.)

Defendant)

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

Carlton Quinton as Personal)
Representative of the Estate of)
Hannah Nicole Quinton, deceased,)

Plaintiff)

-vs-)

Myers Timber Company,)

Inc.)

Defendant)

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTER)

TAYLOR CHERRY, A MINOR)
UNDER THE AGE OF 14 YEARS,)
BY AND THROUGH HER)
MOTHER AND NATURAL)
GUARDIAN, JANE CHERRY,)

Plaintiff)

-vs-)

MYERS TIMBER COMPANY,)
INC.)

Defendant)

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTER)

JANE CHERRY, PERSONAL)
REPRESENTATIVE OF THE)
ESTATE OF NICHOLAS WAYNE)
CHERRY,)

Plaintiff)

-vs-)

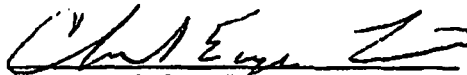
MYERS TIMBER COMPANY,)
INC.)

Defendant)

Personally appeared before, Charles Eugene Levister, who, after being duly sworn, deposes and says:

I am the son of the late Charles Levister who owned Levister Logging Company and I worked for Levister logging Company on March 26, 2007. I know firsthand from my own observation that on that date, the following is accurate:

1. All of the employees of Levister Logging Company were hired, supervised, disciplined, and fired by Levister Logging Company.
2. Levister Logging paid it's employees directly and withheld taxes for each of its employees.
3. Levister Logging kept its own books and was an independent logging company. Its net income was determined by its gross income minus expenses.
4. Levister Logging Company had in effect worker's compensation insurance policy covering its employees and liability insurance on its trucks, including the truck involved in the accident.
5. Myers Timber Company did not supervise Levister Logging operations.
6. Levister Logging maintained its own schedule, performing its obligations under the contract with Myers Timber at its discretion, whenever it chose.
7. For 2007, Levister Logging received a Form 1099 from Myers, a copy of which is attached.


CHARLES EUGENE LEVISTER

Sworn to me this 12 day of July, 2011


Notary Public

My Commission Expires: 7/6/19

Form 1099-MISC

☐ VOID

☐ CORRECTED

FDWAO009L 08/22/07

PAYER'S name, street address, city, state, ZIP code, and telephone no.

MYERS TIMBER COMPANY INC

PO BOX 1013

CAMDEN SC 29021

CONT: FRED MYERS 803-432-6180

1 Rents

\$

2 Royalties

\$

3 Other income

\$

5 Fishing boat proceeds

\$

7 Nonemployee compensation

\$

9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale ☐

\$

11

\$

13 Excess golden parachute payments

\$

15a Section 409A deferrals

\$

15b Section 409A income

\$

16 State tax withheld

\$

17 State Payer's state no.

\$

18 State income

\$

19

\$

OMB No. 1545-0115

2007

Form 1099-MISC

Miscellaneous Income

Department of Treasury - IRS

Copy D
File Copy

For Privacy Act
and Paperwork
Reduction Act
Notice, see the
2007 General
Instructions for
Forms 1099,
1098, 5498,
and W-2G.

PAYER'S federal identification number

57-0760051

RECIPIENT'S identification number

54-2109761

RECIPIENT'S name, address, and ZIP code

CHARLES LEVISTER

2061 CALVERY CHURCH ROAD

CARLISLE, SC 29031

Account number (see instructions)

2nd TIN not ☐

Form 1099-MISC

☐ VOID

☐ CORRECTED

FDWAO009L 08/22/07

PAYER'S name, street address, city, state, ZIP code, and telephone no.

1 Rents

\$

2 Royalties

\$

3 Other income

\$

5 Fishing boat proceeds

\$

7 Nonemployee compensation

\$

9 Payer made direct sales of \$5,000 or more of consumer products to a buyer (recipient) for resale ☐

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11

\$

13 Excess golden parachute payments

\$

15a Section 409A deferrals

\$

15b Section 409A income

\$

16 State tax withheld

\$

17 State Payer's state no.

\$

18 State income

\$

19

\$

OMB No. 1545-0115

2007

Form 1099-MISC

Miscellaneous Income

Department of Treasury - IRS

Copy D
File Copy

For Privacy Act
and Paperwork
Reduction Act
Notice, see the
2007 General
Instructions for
Forms 1099,
1098, 5498,
and W-2G.

PAYER'S federal identification number

RECIPIENT'S identification number

RECIPIENT'S name, address, and ZIP code

Account number (see instructions)

2nd TIN not ☐

15a Section 409A deferrals

\$

15b Section 409A income

\$

16 State tax withheld

\$

17 State Payer's state no.

\$

18 State income

\$

- s. Billy Beard – Upon information and belief, Mr. Beard was one of the first responders or firemen that was on the scene immediately after the collision. He can testify to what he observed at the scene.
- t. Maria Valdez – to be provided

6. List the names and addresses of any expert witnesses whom the party proposes to uses as a witness at the trial of the case.

RESPONSE: Woody Poplin-Poplin Engineering Analysis of Accidents.
David Dorrity, Greenville, SC

7. If you are still suffering from any effects if the accident, please state the symptoms, complaints and/or other disabilities you claim resulted from the accident. If you are not still suffering from any effects of the accident, please state "no".

RESPONSE: Plaintiff still has hardware in his body and requires follow-up treatment with orthopaedic doctors. He may need additional, future surgeries.

8. State in detail all evidence that you have, including any anticipated testimony that Myers Timber Company, Inc. was liable for the actions of Levister Logging and/or George Rogers at the time of this collision.

RESPONSE: See attached deposition of George Rogers.

Respectfully Submitted,



D. Bradley Jordan
Jordan Law Firm, P.C.
546 East Main Street
Post Office Box 11785
Rock Hill, South Carolina 29731
Phone (803) 817-7999
Attorney for the Plaintiff

6-16, 2010

Rock Hill, South Carolina

**MYERS TIMBER COMPANY, INC.
TIMBER HARVESTING CONTRACT
P.O. Box 1013
Camden, S.C. 29020
(803) 432 6180**

STATE OF SOUTH CAROLINA)

COUNTY OF LANCASTER)

KNOW ALL MEN BY THESE PRESENTS, that on this 15 day of September, 2006, the undersigned Mr. Johnny A. Faulkenberry (hereinafter "Grantor"), for and in total consideration of the sum of on a per unit basis (see page 2), has granted, bargained, sold, and conveyed by these presents does grant, bargain, sell, and convey unto **MYERS TIMBER COMPANY, INC.**, (hereinafter "Grantee"), all merchantable timber on the following described property:

Approximately 13 acres located in Lancaster County, South Carolina designated as tax map number 173 parcel 108.

TOGETHER with the right to enter upon and leave the lands of the Grantor for the purpose of cutting and removing said trees and timber, and do to all things necessary upon said lands to remove and cut said trees and timber, subject, however, to the limitations and restrictions herein below listed:

1. Established roads and trails shall be used insofar as possible and shall be kept clear of all tops, laps, and debris, including trash resulting from the logging operations. All roads and trails shall be restored to the original condition after logging is completed.
2. Grantee shall use its best efforts to suppress and control any fire occurring on the property during its operations and will be responsible for damage resulting from fires caused by its negligence.
3. Any trees that are excessively or negligently damaged due to cutting operations, that are not part of the sale agreement, shall be paid for at a rate of two times stumpage value. If young planted pines are damaged due to the logging operations, Myers Timber Company will be responsible for replanting the damaged areas.

4. Grantee shall have a period of 12 months after contract is executed to cut and remove the timber conveyed hereby, and those trees and timber not removed within that time shall revert to the Grantor.

Pine Sawtimber - price per ton:	\$35.00
Pine Chip & Saw -price per ton:	\$23.00
Pine Pulpwood-price per ton:	\$ 7.00
Soft Hardwood Sawtimber-price per ton:	\$16.00
Oak Sawtimber- price per ton:	\$22.00
Hardwood Pulpwood-price per ton:	\$ 7.00

Settlements for per unit sales to be made weekly.

5. Grantee shall have in force at least \$1,000,000.00 general liability insurance and hold landowner harmless for all workmen's compensation claims, if any, arising from the cutting operations.
6. Grantor guarantees good and marketable title to the timber.
7. Funds may be escrowed for the Grantor, however; no interest will accrue on these funds. Escrowed funds will be disbursed on demand.
8. All South Carolina BMP's (Best Management Practices) for forestry will be followed.
9. Decking, Skidding, Driving, or Parking any equipment on or across food plots is strictly prohibited unless granted by owner or their agents.

TO HAVE AND TO HOLD the said trees and timber, to the extent cut and removed within the time hereinabove stated, unto the Grantee, its successors and assigns for 12 months.

Grantee warrants that he/she/they will forever defend the title to the trees and timber, and further covenants and warrants that upon notification by Grantee of valid claim against Grantor's title, the Grantor will return considerations paid by the Grantee, if so requested by the Grantee. Grantor also agrees to hold Grantee harmless from any and all Claims which may arise from questions concerning title to trees and timber.

IN WITNESS WHEREOF, the undersigned has hereunto executed this Timber Harvesting Contract the day and year first written above.

In the presence of:

Ed M. Myers
Witness

Paul R. Myers
Grantee
Myers Timber Company, Inc.

Witness

Letty Teague
Witness

Witness

Johnny A. Faulkenberry
Grantor
Johnny A. Faulkenberry
Address: 202 Stowe Road
SS# Belmont, North Carolina
CORO 111
28012

F
Johnny Jeanette Faulkenberry
202 Stowe Road
Belmont, North Carolina
28012

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 11, 2012

A handwritten signature in black ink, appearing to read 'D. Little, Jr.', written over a horizontal line.

David L. Little, Jr.

DOVE & BARTON, L.L.C.

P.O. Box 907

Rock Hill, SC 29731

Phone: 803-327-1910

Attorneys for Appellants Jane Cherry and Taylor C.