

MONTANA EIGHTH JUDICIAL DISTRICT, CASCADE COUNTY

JOHN A. HUBBARD,

Plaintiff,

-vs-

CARL WEISSMAN & SONS, INC.,

Defendant.

CAUSE NO. BDV-90-067

DEPOSITION OF JOHN HUBBARD

Great Falls, Montana
March 10, 1999
10:00 A. M.

APPEARANCES:

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By: Robert B. Pfennigs
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1 BE IT REMEMBERED that on Wednesday, the 10th day of
 2 MARCH, 1999 at the hour of 10:00 A. M. of said day, at 7th
 3 FLOOR, U.S. Bank Building, Great Falls, Montana, and before
 4 Jack L. Fletcher a Notary Public for the State of Montana,
 5 pursuant to Notice, the deposition of John Hubbard was
 6 taken on oral interrogatories.

7

8

9 Thereupon,

10 John Hubbard,

11 having been first duly sworn to tell the truth, the whole
 12 truth and nothing but the truth, testified upon his oath as
 13 follows:

14 MR. PFENNIGS: For purposes of the record I
 15 would like to establish that counsel for John Hubbard and
 16 myself this morning discussed the extent of this
 17 deposition.

18 All counsel have concerns over the liability issue and
 19 work comp exclusivity. My questions this morning will be
 20 directed toward the liability question and questions with
 21 respect to Mr. Hubbard's employment background, his
 22 employment history; mitigation, damages, and such things as
 23 that will be reserved until a later date.

24 MR. SKORHEIM: Stipulate to that.

25 MR. PFENNIGS: Please state your name and

Page 4

1 address.

2 A John A Hubbard, 158 P. O. Box, Black Eagle,
 3 59414.

4 Q John, my name is Bob Pfennigs, I represent Carl
 5 Weissman & Sons with respect to a lawsuit that you have
 6 filed as a result of an accident occurring I believe in
 7 1987. I would like to ask you some questions about that
 8 accident. Before we begin, I would like to know whether
 9 you ever had your deposition taken before?

10 A Yes, on this, yes.

11 Q You were deposed with respect to this particular
 12 case?

13 A I thought you were referring to that one with
 14 your secretary.

15 MR. SKORHEIM: No. That was just a statement.

16 MR. PFENNIGS: What about with respect to any
 17 other case, have you ever had your deposition taken before
 18 in this type of a setting?

19 A Yes, I guess.

20 Q When would that have been?

21 A That would have been in 78.

22 Q Was that with respect to an injury claim or some
 23 other type of lawsuit?

24 A No. Criminal deal.

25 Q You had your deposition taken?

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1 A I don't remember to tell you the truth. It has
 2 been back in 78.

3 Q You understand in this particular proceeding that
 4 you are under oath?

5 A Yes. It was so long ago that I don't really
 6 remember. I had a lot of questions asked of me. I don't
 7 know if that is considered a deposition or not.

8 Q That is fine. I want to make sure you understand
 9 how this proceeding works.

10 A Yes.

11 Q You are under oath at this particular time, and
 12 under certain circumstances the questions and answers that
 13 you give today can be used as sworn testimony in court, did
 14 you understand that?

15 A Yes.

16 Q And one of the important things as we proceed
 17 today is for you to make sure you understand my question.
 18 Attorneys don't always ask the best questions or most clear
 19 questions. If I ask a question you find to be unclear,
 20 which you don't understand, you need to be sure and tell
 21 me, is that fair?

22 A Yes.

23 Q Have you had any discussions or prepared for this
 24 deposition with anybody other than your attorneys?

25 A No.

1 Q Have you reviewed any documents such as
2 pleadings, reports, or photographs, in preparation for your
3 deposition?
4 A Such as looking at pictures of the accident
5 scene, yes.
6 Q You looked at photographs of the accident scene?
7 A Yes.
8 Q How many photographs did you review, do you
9 recall?
10 A I don't recall offhand.
11 Q Do you know who took the photos?
12 A Some were taken by me, some were taken by Tom
13 Boland, I believe, and I don't know who took them. I was
14 in the hospital at the time.
15 Q Did you know when in relationship to the accident
16 the photographs might have been taken?
17 A I believe it would have been January 23 of 87.
18 Q Of 87?
19 A Yes.
20 Q What date was the accident?
21 A January 22 of 87.
22 Q So you believe the photos that you reviewed, at
23 least some of them might have been taken the day after the
24 accident?
25 A I believe so.

1 Q What about the photos that you reviewed that you
2 might have taken. How long after the accident did you take
3 those?
4 A I am not sure on that, because I was in the
5 hospital for quite a while.
6 Q You recall at some point you went back to Carl
7 Weissman's and took some pictures of the crane?
8 A Yes.
9 Q Do you recall about how many pictures you would
10 have reviewed?
11 A No, I don't.
12 Q Who had possession of these photographs?
13 A I had copies made and my attorneys have some and
14 I have some.
15 Q Did your attorneys have a full set, a copy of all
16 the photographs you are aware of?
17 A I believe they have a copy.
18 Q Anything other than photographs that you
19 reviewed?
20 A A sheet of missing gear guards which I did some
21 investigating on myself after I got out and went to Helena,
22 found a crane, same kind of crane and I took pictures of
23 the gear guards that are on that crane. I talked to the
24 yard man, I don't know if he owns the crane or not, but he
25 gave me a big book and it shows the gear guards that were

1 all missing off of Weissman's crane. I got a copy of it
2 here.
3 Q So it was just a drawing, then?
4 A Yes. I guess you would call it a schematic of
5 missing gear guards.
6 Q I will show you, this is the drawing that you
7 reviewed?
8 A Yes. That is out of his maintenance book for
9 that particular crane.
10 MR. PFENNIGS: For the record, this particular
11 diagram he is referring to was attached to the original
12 complaint, I believe, as an exhibit.
13 Q Who is this person in Helena?
14 A I don't remember his name. I should have wrote
15 this stuff down, and I didn't.
16 Q This was sometime after the accident, then?
17 A Yes.
18 Q Do you recall about how long?
19 A I am trying to think. I don't remember.
20 Q As I understand it you went to Helena and you
21 looked at a crane that was similar to the one that Carl
22 Weissman had in their yard?
23 A Yes.
24 Q And this guy, this person you talked to had a
25 book that you reviewed and took out some photocopies?

1 A I had photocopies made of the gear guards,
2 particularly. It was a maintenance book on that particular
3 crane.
4 Q Did you take any photographs of the crane in
5 Helena?
6 A Yes, I did.
7 Q Are those photographs some of those in the
8 possession of your attorneys?
9 A I believe so.
10 Q Anything else that you reviewed in preparation
11 for your deposition?
12 A I don't think so.
13 Q Do you recall at some point in time you answered
14 written questions or interrogatories that I sent to your
15 attorneys?
16 A Yes.
17 Q Did you have opportunity to review those prior to
18 your deposition today?
19 A Yes, I did.
20 Q As you reviewed the answers that you gave did you
21 see anything in there that you now believe might have been
22 inaccurate, or need to be changed in any way?
23 A I believe in there where Mitchell tells me I have
24 to grease the big bull gear, I didn't say anything because
25 the gear guards are missing. I had no idea about the gear

1 guards missing, but the idea of the grease is to keep from
2 wear, and they are exposed to the elements, wind, rain,
3 snow, dirt, a lot of dirt.

4 Other than that I think it came out in that as a
5 conclusion because the gear guards were missing he told me
6 to did this. I didn't pick it up which I should have, but
7 I missed it.

8 Q Anything else in your interrogatory answers?

9 A I think the rest of the is pretty close.

10 Q John, do you recall whether you have ever given a
11 recorded or written statement to anyone concerning the
12 accident?

13 A I gave lots of statements. I don't know if they
14 have been recorded or not.

15 Q Do you recall who you would have given the
16 statements to?

17 A First attorney, Tom Boland, probably. I seen
18 several other attorneys that I gave statements to. I doubt
19 if they recorded them. John Hoyt, Howard Strause, Eric
20 Thueson.

21 Q Do you remember giving a statement to anyone
22 other than an attorney?

23 A Yes, I have talked a lot about this. All sorts
24 of people.

25 Q Any insurance adjusters that came and asked for a

1 statement?

2 A No.

3 Q What about anybody from the state OSHA or state
4 workers' comp?

5 A No, I don't think so.

6 Q If I remember right you said the date of the
7 accident as best you can recall is January 22, 1987?

8 A Is that correct?

9 Q What date did you start work for Weissman's, do
10 you know?

11 A I am terrible with numbers. I am not sure, I am
12 really not sure.

13 Q Do you know approximately how long you worked for
14 Weissman's prior to the date you were injured?

15 A I worked for them before and I worked for them
16 this time, I think it was five years, four years, I am not
17 sure where it is in there.

18 Q So you think you worked for Weissman for four,
19 five years?

20 A Right.

21 Q Prior to the date of the accident?

22 A Yes.

23 Q And then you seem to indicate that you also
24 worked for them at another time?

25 A Yes, years before.

1 Q Years before?

2 A Yes.

3 Q Do you know when you would have first gone to
4 work for Weissman?

5 A I don't know the dates.

6 Q How long did you work for them the first time?

7 A I think a year or two, couple years, I think. I
8 am not sure. Maybe three years. I am not sure.

9 Q What were your job duties the first time you
10 worked for Weissman?

11 A Worked out toward the base there at North Park
12 before -- they had a junk yard, crushed cars, baled tin.
13 They had a car wrecking yard out there. We were to clean
14 it up.

15 Q Like close it down?

16 A The cars piled up, we had to crush them and ship
17 them out, bale tin.

18 Q You did that for two, three years to the best of
19 your recollection?

20 A From there I went to the brewery deal, Great
21 Falls Brewery and cut up iron, missile caps from the
22 missile job they had, wrecked train cars.

23 Q That was for Weissman too?

24 A Yes.

25 Q This all happened during the first two, three

1 year period you worked for them?

2 A Yes.

3 Q Did you operate any machinery for Weissman at
4 that time?

5 A Yes, I did.

6 Q What type of machinery did you operate?

7 A Big heavy loaders, Case W24 backhoe tractor with
8 a claw on it to grab tin and iron and load into balers.
9 Balers, car crusher, drove light truck.

10 Q Do you recall ever seeing the crane that is
11 subject of this lawsuit during the time you first worked
12 for Weissman?

13 A Yes, it was downtown in the main yard. I didn't
14 work down there at the time.

15 Q You had no occasion to operate it then?

16 A No.

17 Q At some point in time you left Weissman's
18 employment, that is correct?

19 A Yes.

20 Q How long, how big a gap was there between your
21 first employment and when you came back the second time to
22 work for Weissman?

23 A I got a job with Bekins Van Lines, Marbles Moving
24 & Storage. I worked there for, I am not sure how long I
25 worked there, five, six years. I can't say for sure. I

1 got in trouble, I ended up in prison for another five
2 years, I got out in 82, '81 and I got a job first at the
3 Sheraton Inn washing dishes, and then I got a job also down
4 at Weissman's, I went down in the yard and got a job.

5 Q This would be about the time you started your
6 second term of employment with Weissman's?

7 A Yes.

8 Q During your first period of employment do you
9 recall who your supervisors were?

10 A The first?

11 Q The first time you worked for Weissman's?

12 A Don Mitchell was the head mechanic and he was the
13 boss out there. There was another one. They hired a guy
14 who had a funny name. I would say Don Mitchell was the
15 main one.

16 Q Do you recall whether you had any accidents or
17 injuries during your first term of employment with
18 Weissman's?

19 A I don't think I did, no.

20 Q Do you recall who your co-workers were during
21 your first term of employment?

22 A Yes.

23 Q Who did you work with?

24 A I worked with Orlando Parsons, Ron DuBerry,
25 Charles Falkner, or Robert Falkner, Greg Silversmith, Ray

1 Q Was there anything about that particular incident
2 which would lead you to believe that Carl Weissman intended
3 that he be hurt?

4 A No. That was their problem because they unloaded
5 the grid wrong.

6 Q You are referring to the employees?

7 A Yes.

8 Q You think you might have gone back to work for
9 Weissman's some four, five years prior to 1987 when you
10 were injured?

11 A What do you mean?

12 Q At some point then you left your employment with
13 Carl Weissman, then I think you testified that a period of
14 years later you came back to work again for Weissman?

15 A Right.

16 Q And that you worked for them for you believe
17 four, five years before you were hurt?

18 A Yes.

19 Q So that would put, I guess the time of your
20 second employment, when that began sometime around 1982,
21 1983, does that sound about right to you?

22 A I think 82, somewhere in there. I am not sure.

23 Q When you returned to work at Weissman's what were
24 your job duties the second time around?

25 A I was hired as a laborer. My job was to cut iron

1 LaMere. There was a bunch of them. Some I don't know
2 offhand.

3 Q Were any of these people still employed with
4 Weissman's when you returned for your second term of
5 employment?

6 A No.

7 Q Do you recall any accident or injuries involving
8 any of these people during your first term of employment?

9 A Yes.

10 Q What are those?

11 A They were loading a semi with bales of tin and I
12 wasn't there, I was over crushing, but they had the big
13 loader that holds up a half moon grid that came from the
14 missile silos, had bales of tin on it. Ray Lamere and Greg
15 Silversmith were unloading it, they unloaded one side;
16 naturally it got heavy and it flipped, catapulted Ray
17 Lamere from the top of the truck all the way over. He
18 landed on the ground. The only thing that saved him from
19 the iron grid crushing him was the bale was still there,
20 they stopped about a foot and a half off the ground. It
21 would have cut him right in half.

22 Q Was he injured then in the accident?

23 A He got the wind knocked out of him, I think
24 scratched and bruised. The ambulance didn't come or
25 anything.

1 in the front yard and load and unload trucks, shear iron
2 with the shear, sometimes smelt aluminum. That was my main
3 job, I was to separate aluminum from the stainless steel.
4 They had a guy smelting it, but you had to separate it. It
5 was a big pile of junk. Take the aluminum out of the
6 stainless steel.

7 Q How do you do that?

8 A By hand. Just drudgery work pulling stuff out.
9 You pile the stainless to be baled, or pile it in boxes or
10 something to ship out separate. You had to separate that
11 magnesium in there, you got to separate that from the
12 aluminum.

13 Q So I guess in your position as a laborer then who
14 was your supervisor?

15 A Will Williams.

16 Q Do you know whether Mr. Williams was still
17 employed by Carl Weissman on the date of your injury?

18 A Yes.

19 Q Was he still your supervisor?

20 A Yes.

21 Q Did you only have one supervisor?

22 A Paul Rosen was another supervisor. He is a
23 purchasing agent for Weissman's and he left after while and
24 started Rosen Brothers Demolition in Butte.

25 Q Did he leave prior to the date of your injury?

1 A Yes, he did.
 2 Q What about Don Mitchell, was he still with CWS?
 3 A Yes, he is head mechanic, he worked over at the
 4 brewery and fixed the machinery that would break down.
 5 Q My recollection from your earlier testimony was
 6 that Don was your supervisor the first time you worked for
 7 Weissman's?
 8 A Yes.
 9 Q Did he have any supervisory authority over you
 10 the second time that he went to work for Weissman?
 11 A I listened to him because he is the head mechanic
 12 and knows his stuff about the machinery.
 13 Q You felt he was a pretty competent mechanic?
 14 A Yes.
 15 Q During your first term of employment with
 16 Weissman did you ever have any disagreements with Don
 17 Mitchell?
 18 A No.
 19 Q Did you get along with him pretty well?
 20 A Yes.
 21 Q How about during your second term of employment.
 22 Any disagreements with him?
 23 A No problems with him at all.
 24 Q So when you went to work your second time then,
 25 as I understand it, you were employed as a laborer and you

1 mostly worked with the scrap iron.
 2 A Yes.
 3 Q Did your employment duties change at all during
 4 the course of time?
 5 A Yes, they did.
 6 Q In what way?
 7 A Paul Rosen would run the crane and he would break
 8 it. He would run it too fast, he always would be pulling
 9 the electrical cable out of the magnet. He would have me
 10 fix it. Shut it down and have me fix it. I was always
 11 doing it, I always ended up fixing it and one day he said
 12 get in here, he was going to teach me how to run the crane
 13 and showed me how everything worked; you got four levers,
 14 pull up, still on the brake, two brakes, one is for
 15 drawback, one up and down, you step on the brakes and hold
 16 the magnet. Magnet weighs 3,000 pounds so you have to be
 17 careful with it. It is on a drag line, a cable crane. He
 18 had me work it a few times. I dropped it the first time.
 19 Picked it up but five feet and I didn't have sense enough
 20 to put the brake on and it dropped. He said that is what
 21 you don't want to do. Step on the brake. He had me work
 22 it, pick up iron, hit the magnet on, pick it up, move the
 23 crane. Had me do that three, four, five times and left me
 24 on my own to practice with it, clean up the yard. That is
 25 when I started running the crane.

1 Q Maybe you could describe this particular crane a
 2 little bit for me. What type it was, how it worked?
 3 A When I seen it this time it had a yellow cab on
 4 it, it was modified, redone. It didn't look anything like
 5 the old crane that was there. It was the old crane, but it
 6 was modified.
 7 Q When you are referring to the old crane, the
 8 crane that Weissman had in their yard the first time you
 9 were working for them?
 10 A Yes. Had a big orange and black house on it.
 11 Q Describe what it looked like?
 12 A Had a diesel engine in it.
 13 Q During your first employment it had a diesel
 14 engine?
 15 A Yes.
 16 Q Had an orange and black house?
 17 A Yes.
 18 Q Anything else that you can remember about it the
 19 first time?
 20 A I didn't run it or anything. I just know it had
 21 an old diesel engine in it, and big orange and black house.
 22 It was an old time crane.
 23 Q How was the crane different than when you came
 24 back to work for Weissman's the second time?
 25 A They had a different house on it. It is noisy

1 when you are in there. The levers are loose. Worked the
 2 heck out of that crane, it made them a lot of money, I am
 3 sure. It had a pigtail sticking out of the top, electric
 4 cable, electric motor in it.
 5 Q What is a pigtail?
 6 A Steel pipe coming out the top, coming back
 7 horizontally and dropping down and had a four inch electric
 8 cable that ran through the yard to a fuse box over on the
 9 side and I instantly thought that is pretty scary, electric
 10 crane in a steel scrap yard.
 11 Q Did the crane move at all?
 12 A Yes, I could walk it. You have levers on the
 13 side, lock the house, the turret so it won't roll, lock
 14 that, pull it out of gear for the swing into travel gear
 15 and then when you push your far right lever it will move,
 16 it will walk.
 17 Q What would happen with the pigtail when you tried
 18 to move the crane?
 19 A That is a scary deal. They had me get a guy and
 20 hold a board underneath the pigtail and walk with it to
 21 make sure it didn't get snagged up on iron and pull out. I
 22 have observed Paul Rosen walk it and snag it and jerk it
 23 out of the housing a few times and sparks fly and it is a
 24 scary deal.
 25 Q When about during your second employment did you

1 start running the crane, do you recall?
 2 A That is another thing, I really don't remember
 3 how often, when that started.
 4 Q Had you been there for a while, do you think?
 5 A It seemed like I was there, I can't say how long
 6 I was there, whether it was three weeks to a month or three
 7 months, or what.
 8 Q Did you run the crane -- do you recall how long
 9 you ran the crane before you were injured?
 10 A I ran it for at least a good four years.
 11 Q So would it be fair to say that you ran the crane
 12 for a good portion of the time you were working for
 13 Weissman's the second go around?
 14 A Yes. I turned into main crane operator.
 15 Q You think you were the main crane operator for
 16 maybe four years?
 17 A Yes. That is a rough estimate.
 18 Q Prior to you becoming the main crane operator you
 19 believe the main crane operator would be Paul Rosen?
 20 A Andy Rosen too. He moved to Butte with Paul. I
 21 was driving truck for them too.
 22 Q Andy was?
 23 A Andy was. They were brothers.
 24 Q You recall seeing Andy run the crane?
 25 A Yes, Andy run it better than Paul, but he could

1 drive truck too. So they had him on the road a lot.
 2 Q Other than Andy Rosen, Paul Rosen and yourself,
 3 do you recall ever seeing anyone operate this particular
 4 crane?
 5 A Will Williams.
 6 Q He was your --
 7 A Main supervisor.
 8 Q Your main supervisor?
 9 A Yes.
 10 Q On what occasions would Will Williams operate the
 11 crane?
 12 A My day off. When I was busy with something else,
 13 unloading truck or loading cars. I loaded a lot of crushed
 14 cars on trucks with the big loaders. If I was busy doing
 15 that and somebody came in I would run the crane.
 16 Q Anyone else you can recall running the crane
 17 beside those three people and yourself?
 18 A No, that is it.
 19 Q Do you recall whether during the times these
 20 other people, I am referring to Will Williams, Paul Rosen,
 21 Andy Rosen, the times that those particular people operated
 22 the crane, were there any modifications or safety guards
 23 that were added that weren't there when you operated the
 24 crane?
 25 A No.

1 Q So the condition they operated the crane in was
 2 the same condition that you operated the crane in?
 3 A Yes.
 4 Q Did you have any experience operating the crane
 5 or other heavy equipment prior to your employment with
 6 Weissman's?
 7 A Before I worked for them ever?
 8 Q Right.
 9 A I worked with my grandpa, he owned Mountain State
 10 Fence, I drove tractor, if you call that heavy equipment.
 11 Q Any other experience operating a crane?
 12 A No.
 13 Q With respect to this particular crane, I
 14 understand that sometime, I guess, between your first
 15 employment and your second employment the crane was
 16 modified?
 17 A Yes. Must have been.
 18 Q The house was changed?
 19 A The house was totally different.
 20 Q The motor was switched?
 21 A The motor was switched from a diesel engine to a
 22 440 electric motor.
 23 Q During that process as I read your complaint it
 24 is your allegation that some safety guards were removed?
 25 A Yes.

1 Q I read from paragraph 3 of what is entitled
 2 Amended Complaint and Jury Demand it says in there the
 3 defendant knowingly and intentionally removed the gear
 4 guards from the crane before the plaintiff was employed by
 5 the defendant. Is that an accurate statement?
 6 A Yes.
 7 Q So at the time you started your employment, your
 8 second employment with Weissman's the guards were already
 9 off the crane?
 10 A Yes.
 11 Q Would you agree with me then that the removal of
 12 the guards, the safety guards from the gears was not
 13 something that was done by Weissman with any specific
 14 intent to injure you?
 15 MR. SKORHEIM: Object to that, asking for a
 16 conclusion on Mr. Hubbard's part. There is no foundation
 17 and would be pure speculation. There is no way he could
 18 know what Weissman was thinking when they removed the
 19 guards.
 20 Q You can answer if you can.
 21 A I imagine they didn't put them on because it was
 22 too much trouble to put them back on.
 23 Q My question was, are you aware of any facts that
 24 would indicate to you the guards were removed with the
 25 intent that you would be injured?

1 A Not with intent that I would be injured, but with
2 total disregard for any operators' safety.

3 Q Do you recall during your second term of
4 employment with Weissman having any disputes or arguments
5 with any of your supervisors?

6 A No.

7 Q What about your fellow employees?

8 A A few times, yes.

9 Q Were those disputes or arguments such that you
10 have reason to believe anybody would have been out to get
11 you or injure you?

12 A No.

13 Q We will get to the facts of the accident here in
14 just a little bit. I understand that your injury occurred
15 while you were greasing the crane that we have been talking
16 about?

17 A That's correct.

18 Q Do you know what type of crane this was. Is
19 there some definition we can put to it other than just the
20 crane?

21 A It is a Northwest. I am not sure of the year.
22 That has been a big dispute on the thing. Call it the
23 Northwest Crane.

24 Q That is the crane you were working on the day you
25 were injured?

1 A No, that was diesel.

2 Q Did it have a big magnet on it?

3 A A smaller magnet. Didn't have as good drawing
4 power.

5 Q Did you have occasion to do any type of service
6 or maintenance on the second crane?

7 A Yes. I made sure it was full of oil and fuel,
8 greased it too.

9 Q Back to the crane in the yard, the one involved
10 in the accident, I understand you were greasing or
11 lubricating that crane at the time you were hurt?

12 A Yes, I was.

13 Q Had you ever done that job before?

14 A Many times.

15 Q So you lubricated this particular crane many
16 times?

17 A Yes.

18 Q That would have been during the course of your
19 four years as the head crane operator?

20 A Yes.

21 Q Did you start with the maintenance and
22 lubrication at the same time you started operating the
23 crane?

24 A No, I didn't.

25 Q That started sometime later?

1 A Yes.

2 Q It is the same crane we have been talking about?

3 A Yes.

4 Q Were there any other cranes in the yard that we
5 could get this confused with?

6 A There is one at the brewery, it was a rail crane
7 I run too.

8 Q But that crane wasn't located in the same yard?

9 A No, it is across town.

10 Q That crane doesn't have anything to do with your
11 injury, does it?

12 A No.

13 Q You did operate that on occasion?

14 A Yes, I did.

15 Q How regular would you work on the other crane?

16 A We had iron over there, had a crew over there
17 cutting iron. It was on the tracks and you could move it
18 like a train, like boom down, and I could roll across and
19 hook onto a train car, come across, put the boom back up,
20 take it out of lock, and start loading it with the iron.
21 That is what I would do with that. I have done that I don't
22 know how many times.

23 Q Did you do that on pretty regular occasions?

24 A Yes.

25 Q Was that an electromagnetic crane?

1 A Yes.

2 Q How much later?

3 A I can't be sure. It started when it started
4 squeaking, we had a service truck, it was like an old Bell
5 Telephone truck with tool compartment on both sides and a
6 compressor in the back, air compressor and grease. I think
7 I complained about a squeak, we will get the service truck,
8 you can service it. You have to clean all the zerks. I
9 can't remember how many zerks are on that things. There
10 are a lot of zerks on it. The air helped, the air greaser,
11 but you start greasing, someone comes with iron or a job,
12 you have to quit, go to work with it or something.

13 Q How long would it take to grease and lubricate
14 the crane from beginning to end?

15 A I would say better than half a day, three
16 quarters of a day, probably.

17 Q Six hours?

18 A If you want to do a complete job. I am
19 thinking-- I want to call it the stick.

20 Q The end of the crane?

21 A The boom is what it is. There is a pulley on the
22 end, you want to boom that down and grease the wheels on
23 that too. The rotomatic which is a wheel on the side holds
24 electrical cable, whenever you move it it has to roll to
25 let the electrical cable come up and down without breaking.

1 You have to grease that too. A lot of times didn't
2 grease that as much as the rest of it.

3 Q Is that the work you just described, was that
4 done by means of grease zerks or grease fittings?

5 A Yes.

6 Q You would grease those with an air greaser or a
7 grease gun?

8 A Yes.

9 Q I would assume you also had to grease the gears?

10 A Yes.

11 Q Did you receive any instruction on how to do
12 that?

13 A No, I figured you just hit all the zerks. I
14 never had too much instruction on that. Mitchell was in
15 one day and that big wheel was running, the crane is
16 running, and he got up on the side, he was monkeying with
17 something. He said you got to grease this big wheel every
18 once in a while too. He had a paintbrush, we call this
19 pressed grease, tar grease, black sticky grease, put the
20 paint brush in and held it over the wheel, it was running
21 and it runs off like thick syrup. Told me I had to grease
22 that wheel every once in a while and he laughed. That was
23 Mitchell. I said all right, it is exposed to the elements.

24 It is a big bull gear, four foot diameter. I believe
25 five inch face, probably inch and a half cogs on it.

1 that big wheel. I didn't even think of wear on it or
2 anything like that.

3 Q Do you recall when this conversation with Don
4 Mitchell would have occurred during your term of
5 employment?

6 A I don't remember.

7 Q Subsequent to this conversation with Don Mitchell
8 did you ever have occasion to grease that gear?

9 A Yes.

10 Q How many times. Are you able to say?

11 A I am not sure of that either.

12 Q Can you give me maybe a time period as to how
13 often you would lubricate the crane or the gear?

14 A I know from friends I have who work construction
15 that all equipment is supposed to be greased every eight
16 hours. But down there there was no such animal because we
17 are too busy to grease it every eight hours. Usually on a
18 job like that they have a greaser who does nothing but
19 grease, but being where we are working, it got greased when
20 I got a break in the action to do it.

21 Q You think that was on a fairly frequent basis?

22 A Could skip months, sometimes once every two
23 months, could even drag longer. It was just whenever we
24 weren't very busy I could get at it.

25 Q Do you think you greased this crane more than a

1 Q Are you aware of any facts that would indicate to
2 you at the time Don Mitchell instructed you on greasing
3 this particular gear that he or anyone else from Carl
4 Weissman intended you would be injured at some point in
5 time?

6 A No.

7 Q Did you receive instruction on maintenance from
8 anyone else?

9 A No.

10 Q And the only instruction you received from Don
11 Mitchell then was this one particular time which you just
12 described?

13 A Yes. He said I had to grease that big gear every
14 once in a while.

15 Q Did he give you any instructions on how you were
16 supposed to do it, other than just showed you that once?

17 A It was running. Something about leaving it
18 running for better lubrication.

19 Q Where was Don at the time he gave you that
20 instruction?

21 A He was standing on the deck of the crane right
22 beside that big wheel.

23 Q Where were you?

24 A I was on the ground cutting iron. He called my
25 attention to it. Prior to that I greased everything but

1 dozen times?

2 A Yes.

3 Q More than two dozen?

4 A Yes.

5 Q More than 50?

6 A Yes.

7 Q So it was something you did on a fairly frequent
8 basis?

9 A Yes, because I know if you don't grease it you
10 are going to wear it out and it will be broke down.

11 Q At the time you started greasing this particular
12 gear the safety guards had already been removed?

13 A Yes.

14 Q Did you grease the crane the same way every time?

15 A Yes.

16 Q During the 50 or more times that you greased the
17 crane prior to the date of the accident had you had any
18 injuries or close calls?

19 A I pulled my back over in the rail yard. P&H
20 truck crane I run over there.

21 Q A different crane?

22 A Totally different crane.

23 Q A third crane?

24 A A third crane. I forgot about it. A diesel
25 crane on a truck. You can drive it around and put the

1 outriggers out. I had a crew over there cutting railroad
2 rail. I grabbed the rail with the magnet, pulled it out,
3 dropped it and busts like glass. They notch the top rail.
4 I got off the crane and they picked up -- we had guys hired
5 to pick up the iron. Get a loader bucket, take it over to
6 the rail head. I tried to grab a piece of rail out of the
7 ground and I pulled my back. Other than that, I had a load
8 of iron dropped on me. That was an accident. Paul Rosen
9 dropped a load of iron on me. I was on the gondola, the
10 main yard with this crane that I got injured on, but he was
11 loading the train gondola and someone threw shocks in the
12 pile and that is a big no, no. When they send it to the
13 mill the shocks blow up like a bomb.

14 Q Talking like a shock absorber for a car?

15 A Yes. So what you had to do when you had dirty
16 Number 2 iron you had to have a guy sit on the end of the
17 gondola, crane operator grabs the iron, drop it in the
18 gondola, the guy would have to look for any shocks, jump
19 down, grab the shocks, throw them out of the car. You can
20 get a whole car rejected if they find one shock. When they
21 hit the furnaces they expand, blow up like a bomb. That is
22 what I was doing. I don't know, it must have been during
23 the weekend. I watch my iron. Someone threw a bunch in
24 the iron pile. I dropped a load, I jumped down got a
25 couple shocks, threw them out, dropped another load, there

1 is a bunch of shocks in this, I am grabbing them. I heard
2 the jingle of the magnesium chains. I looked and the
3 magnet was over me. Apparently Paul didn't notice that I
4 was in there. He hit the button and dropped a load of iron
5 on me. Split my face right here and I was just trying to
6 get out of there. I got buried with iron, throwing car
7 bumpers, trying to get out before he dropped another load
8 or dropped the magnet, even worst. That was the other
9 accident I had. I think I got steel in my eye too sometime
10 down there.

11 Q Any accidents or injuries that you incurred while
12 you were lubricating or greasing the crane prior to the
13 date of your injury?

14 A No.

15 Q During the 50 or more times that you lubricated
16 or greased this crane prior to the day of your injury, do
17 you have any facts or are you aware of any facts that would
18 indicate that anyone from Weissman's intended that you be
19 injured?

20 A No. It got increasingly hard to grease the crane
21 because they took the service truck away with the
22 compressor and the grease gun. That is when I had to end
23 up greasing it by hand, hand grease guns. That was a major
24 pain in the ass.

25 Q Anything about the fact that the service truck

1 was taken away that would indicate that Weissman's or
2 anybody that was employed by Weissmans intended that you be
3 injured?

4 A I don't know about that. The throw-out bearing
5 went out on the truck, and went to the shop. We never seen
6 it again.

7 Q Is there anything, to your knowledge, any facts
8 you are aware of that would indicate that while you were
9 greasing this particular crane or lubricating this
10 particular crane that anyone from Carl Weissman intended
11 that you would be injured?

12 A No.

13 Q With respect to the accident, what time of day
14 did it occur?

15 A I am thinking 2:30 or so. I am not real sure.

16 Q This would be in the afternoon?

17 A Yes.

18 Q Do you recall it being after lunch?

19 A I believe so.

20 Q What time of day did you normally start work?

21 A 8:00.

22 Q Could you describe your activities for me maybe
23 from the time you arrived at work on the day of the
24 accident up maybe to the lunch hour?

25 A What was happening was our fab shop across the

1 street was getting emptied out and they were bringing all
2 the stuff over in the iron yard. This is stuff that was
3 brought in as junk and Morrie Weissman wanted it saved, it
4 had to be put on trucks and taken over. Now they are
5 taking it back and sitting it in front of me. I knew
6 Morrie wanted to keep it, and the guys from the fab shop
7 wanted it junked. I am inbetween a rock and a hard place
8 because I am getting the stuff he wants to keep, the big
9 boss wants to keep, and the other guys want to get rid of
10 it. All I know is they were running a lot of stuff over to
11 me, plugging up my yard big time.

12 Q Who was in charge of the fab shop?

13 A Tom and Matt Campbell, I believe. They were
14 moving that stuff out because Northwest Fence was moving in
15 there. They wanted it out of there. It was pretty busy
16 with all that stuff, trying to store good stuff and I had
17 to junk some of it.

18 Q The morning of the accident then you believe your
19 time was taken up with sorting iron that was being brought
20 over from the fabrication shop?

21 A Yes, it was giving me quite a headache. I had
22 stuff I know Morrie wanted to save.

23 Q I recall reading someplace that you were doing
24 some maintenance on the crane in the morning. Do you
25 recall that?

1 A The morning?

2 Q The morning of the accident.

3 A When it is cold in the morning what you got to do
4 is pop those brakes and you got to start it and let it warm
5 up because if you don't that brake will come back, it will
6 kick you like a Missouri mule. Other than that I don't
7 recall any maintenance.

8 Q Do you recall who Gary Marshall is?

9 A No, I don't.

10 Q I can't remember where I read it, I just remember
11 I read something you and Gary Marshall were performing
12 maintenance on the crane in the morning?

13 A He must have been the new guy then.

14 Q Do you remember performing any type of
15 maintenance on the crane with this new guy?

16 A That afternoon I had him help me pull the motor
17 house back.

18 Q Describe that for me.

19 A The crane has a motor house that covers the
20 electric motor, keeps the snow off of it because it is
21 electric, it takes two guys, one on each side to pick it up
22 and roll it back so you can get at the motor to grease the
23 zerks on the electric motor and such.

24 Q So you recall you and Gary Marshall might have
25 done that or you and the new guy might have done that

1 accident?

2 A I come back, I had some knothed there who was
3 trying to cut a diesel -- he cut a diesel head. That is
4 cast iron. You don't waste oxygen on cutting cast iron.
5 You don't cut cast iron with a torch. I got on his ass, I
6 don't remember his name. What did you do that for. For
7 shits and giggles he told me. A knothed thing to do.
8 All I know, I had bridge trestle in at the time too which
9 is number 1 iron, it is thick iron. I was putting that
10 away too. I remember that was around the crane on the
11 sides. I had a hell of a mess down there.

12 Q Did you get in an argument with this particular
13 employee that used the torch to cut the cast iron?

14 A No. I told him that is a knothed thing to
15 do.

16 Q Do you recall who that was?

17 A I don't remember. He was a new guy. We go
18 through guys like you change socks down there.

19 Q Was it the same new guy who later helped you move
20 the motor housing on the crane?

21 A No, there was a tall guy.

22 Q Somebody different than --

23 A Tall goofy guy. I don't know his name.

24 Q So then what did you do after you came back from
25 lunch?

1 sometime during the day?

2 A Gary Marshall is the one who worked there.

3 Q You don't know who he is.

4 A There was a new kid there working with me. I
5 don't know his name. That is how new he was.

6 Q In the morning tell me one more time what you did
7 in the morning to the best of your recollection?

8 A It seemed like I had all the stuff from the fab
9 shop coming over and I was trying to have some of it put
10 aside the building because I knew we were going to end up
11 Morrie would want it saved. Some of it I had to junk. I
12 was trying to sort the best stuff from the worst. There
13 are such things as diesel engines, transmission parts,
14 there was an overhead crane that runs on beams, stuff like
15 that. Big metal door I know Morrie wanted. I saw they
16 tore that up.

17 Q Did any of the work that you did in the morning
18 require you to use the crane?

19 A Yes.

20 Q So you were operating the crane in the morning?

21 A Yes.

22 Q At some point did you go to lunch?

23 A Yes.

24 Q Do you recall, tell me what happened between the
25 time you returned from lunch up until just before the

1 A I started moving iron, I can't remember if I was
2 junking some of the stuff they brought over. I had the
3 bridge trestle to put away. It was January 22 so every
4 time I turned the crane it was squeaking bad, the house was
5 really squealing, so I thought I can't take that any
6 longer, it is like running your fingers on a chalk board.
7 I am going to grease the son of a bitch. So the new kid, I
8 don't know his name, we started greasing the crane. They
9 called him in. We had the house back, they called him in
10 because we had feathers coming from the Hutterites. We buy
11 feathers from the Hutterites, and when they come in come in
12 with all these grain trucks and they are busy. So I was
13 greasing it by myself.

14 Q For at least a period of time this new employec
15 assisted you with lubricating the crane?

16 A I remember he helped me tip the motor house back
17 and it seemed like they took him right away, but I am not
18 sure on that. Seemed like he was a young kid to me.

19 Q What happened then after the new employec was
20 called away?

21 A The cranc was running, I had that pressed grease
22 on the side, and what I had on, I had a jean jacket over an
23 Air Force flight jacket. I took it off, took off the Air
24 Force flight jacket, but the jean jacket on, it was
25 chinooking then, that is why I decided to grease it while

1 the weather was warmed up. I stuck the brush in the
2 pressed grease or tar grease and I held it up over the big
3 bull gear, which is a four foot gear.

4 Q Was the crane running?

5 A It is running, running probably about 700 rpm,
6 the big gear.

7 Q Had you already greased all the grease zerks?

8 A I was more concerned with the house because every
9 time I turned it it was squeaking. There are zerks on the
10 tracks and you have to dig the mud out, a wire to dig the
11 mud out of the zerks. I didn't touch those at all. I was
12 concerned with the house, every time you turn it it was
13 doing a high pitched screech that is nerve racking. So it
14 has tubes running with zerks on it for the house, for the
15 rollers underneath, and stuff, and it has that big bull
16 gear. That is what I was greasing when I lost my arm.

17 (Whereupon, a brief recess was taken.).

18 MR. PFENNIGS: Back on the record.

19 Q John, at the time we took a break I believe we
20 were discussing your activities immediately prior to the
21 accident?

22 A Yes.

23 Q You were describing what you were performing as
24 far as lubrication and greasing of the crane on the
25 afternoon of the accident. Maybe if you could just

1 MR. PFENNIGS: I will get a copy of this made
2 and attach it as a Deposition Exhibit.

3 (Deposition Exhibit No. 1 marked for
4 identification.)

5 Q You are referring to the third page of this
6 document which will be marked as Deposition Exhibit 1.
7 What does the instruction on that page say?

8 A The teeth of the clutch gear are lubricated with
9 good sticky open gear compound which requires heating
10 before it can be applied. Always apply while hot.
11 Lubricate clutch gear at least once each eight hours or
12 more frequently if necessary to prevent metal to metal
13 contact between teeth, clutch gear and teeth of the
14 horizontal reverse shafts. I can't read it very good.

15 Q All right. This instruction that you just read
16 refers to lubrication of the bull gear?

17 A Yes, we call it the bull gear. It is a clutch
18 gear.

19 Q I guess my question was do you recall whether you
20 used the same weight lubricant during the winter as during
21 the summer or use a different --

22 A Yes. It was just a five gallon bucket of black
23 sticky grease that Mitchell brought over.

24 Q When did Mitchell bring this particular grease
25 over?

1 conclude with that testimony. Is there anything else you
2 would like to add?

3 A Where did I leave off. I was greasing the wheel.

4 Q Yes. I think you said you were worried about the
5 greasing of the housing because it was squeaking real bad,
6 so you greased some zerks for the house and then maybe you
7 were about to tell me about greasing the big gear, the bull
8 gear.

9 A Right. It was running, I had that jean jacket
10 on, I dipped the brush in the tar grease, pressed grease.

11 Q Was there a different-- did you use the same type
12 of pressed grease every time that you lubricated?

13 A Yes. This pressed grease is a black sticky
14 grease, and it is for the face of these big gears. The
15 other grease is like you find for your car in the tube with
16 the grease guns and such.

17 Q Is the pressed grease, did you use a different
18 weight during the winter as opposed to summer?

19 A That is what is on the instructions. It is to be
20 heated.

21 Q And what instructions are you referring to?

22 A On the missing gear guard.

23 Q On that diagram referred to earlier?

24 A I believe it says should be heated. Apply when
25 hot.

1 A I don't remember. The same time he told me about
2 greasing the face of that gear.

3 Q At the time he instructed you about greasing the
4 gear, I recall that you said he told you something about
5 you need to do that every once in a while?

6 A Yes.

7 Q And at that point in time what did Don Mitchell
8 do?

9 A The crane was running and he had a paintbrush,
10 and he had it up like this, and the grease was running off
11 on to the gear while it is running.

12 Q Who was running the crane?

13 A I was cutting iron so I think he was over working
14 on the electrical problem. We kept blowing fuses with it.
15 I am not real sure on that. He had it running when he put
16 the grease on. He had grease. He had grease with him, he
17 was the main mechanic.

18 Q Anything else that Don said at that particular
19 time?

20 A Leave it running for better lubrication.

21 Q That is what you recall him telling you?

22 A That is what I recall.

23 Q Do you recall anybody telling you you needed to
24 shut the crane off when you lubricated it?

25 A No.

1 Q Do you recall receiving instruction on
2 lubrication from anyone other than Gary Mitchell?

3 A Don Mitchell.

4 Q Don Mitchell?

5 A No.

6 Q Do you recall receiving any instruction from Don
7 Mitchell other than the one time we just have been talking
8 about?

9 A Yes, a lot of different things.

10 Q Instruction on lubrication?

11 A No, not on lubrication.

12 Q Just that one particular time then that he told
13 you you needed to grease the gear once in a while?

14 A Yes.

15 Q Why don't you tell me how you were injured?

16 A I stuck the paint brush in the grease with my
17 right arm, I held it up over the gear, it was running,
18 something clunked, made a noise, and I tipped, looked like
19 this. When I did I must have dropped my arm and I had a
20 large jean jacket on and it caught my sleeve. Next thing I
21 know I jerked back, it has my fingers. I tried to jerk my
22 fingers off. I could feel it pinching my fingers, I am in
23 a panic trying to get out of the thing. I am jerking back
24 like mad, but it had that jacket and I couldn't get out. I
25 don't know how I lived through it, neither did the OSHA

1 grabbed and pulled my arm, put pressure on it. And I had
2 to get up and walk out of the iron yard. I staggered out,
3 I fell down, I think a couple times, and I got up to the
4 scale house, Wayne Munn's truck was on the scale getting
5 weighed. I bounced off that and off the scale house and I
6 went up in the scale house and there was blood squirting
7 all over from the artery, and I went in and Fred LaRoche
8 told me to lay down. And Willy and Wayne Munn turned white
9 and ran outside and Fred LaRoche pinched off that artery
10 and was screaming at them to call the ambulance, and the
11 ambulance come and I remember I figured I was going to
12 die.

13 Q Who is Willy?

14 A Will Williams, we call him Willy. He was my
15 supervisor.

16 Q Do you know whether there were any witnesses that
17 actually saw the accident itself?

18 A No.

19 Q You never talked to anyone who told you they saw
20 what happened?

21 A No. Brian Dahl worked in the back yard smelting
22 the aluminum, but he didn't say he saw it.

23 Q As I understand it then at the time you were
24 injured the gear guards that you have been referring to,
25 there was a gear guard that was missing from the clutch

1 man, because it should have ripped me off my feet and took
2 me through there and split me to pieces. I jerked back,
3 tried to jerk my fingers off, it is pulling me off,
4 mulching my arm up at the same time. This jacket was
5 fairly new. I couldn't get that denim jacket out of there,
6 it had my arm, and kept mulching and mulching, chewing me
7 and chewing me. I got down to my head, I got a crack in my
8 head here, it kind of goes to a little point. That is
9 where I was down like this, I had a groove on one side of
10 my head, it hit me in the head. I knew I was going to go
11 through that son of a bitch. I got scared and I jerked and
12 jerked. Over here the slip clutch is running, it doesn't
13 have any gear guards on it. Caught the loop on the jean
14 jacket. Drug me town, broke my arm off where it is,
15 slapped me on the deck of the crane, then it had me by the
16 jacket, spun me around. I seen the sun go by three, four
17 times. I landed on the deck of the crane, it chewed the
18 jacket off me, my shirt, I was bruised from my chest down.
19 I blacked out when I hit the deck of the crane. I come to
20 and I put my head up and I got hit in the back of the head
21 by the slip clutch spinning, so I shoved myself off the
22 crane, which I imagine is about four and half feet off the
23 ground and I landed on a bridge trestle which gouged my
24 face here. I blacked out again, I come to and I felt
25 really weak and I knew I was bleeding to death. So I

1 gear, bull gear?

2 A Yes.

3 Q And then there was another gear guard I think you
4 said that was missing?

5 A There are numbers on them. I don't know if you
6 want that or not. Yes, these are pictures of gear guards
7 that -- these are missing on this sheet 6280.

8 Q Deposition Exhibit 1?

9 A This one, all of these.

10 Q Maybe I misunderstood. There was another gear
11 behind you that grabbed on to the back of your coat?

12 A Yes.

13 Q What did you call that?

14 A Slip clutch.

15 Q Was there supposed to be a gear guard on that?

16 A There should be, yes.

17 Q That was missing?

18 A It spins really fast. The OSHA guy told me 48
19 hundred rpm. That is where I know the figures from, the
20 OSHA man.

21 Q You think there was supposed to be a gear guard
22 on the slip clutch too?

23 A A guard, yes.

24 Q And there weren't any guards on either the bull
25 gear or the slip clutch?

1 A No.

2 Q And those guards had been missing ever since you
3 started working there the second time?

4 A Yes.

5 Q Do you recall whether you ever made a complaint
6 to anybody at CWS regarding the fact that the safety guards
7 were missing?

8 A The thing is I didn't know about it. I thought
9 that is the way it was. I made comment about the
10 electrical, telling them a guy could get electrocuted in
11 this thing and they told me no, you couldn't, if the cable
12 breaks stay there. Have someone in the yard shut it off.
13 What I am telling them, it is steel. There is not rubber
14 tires on it, has tracks on it like a tank. It is right to
15 ground. You will get fried in it. I was more concerned
16 that way. I didn't have no idea about the gear guards
17 until the OSHA man told me in the hospital all the gear
18 guards were missing and I wondered how I lived through it
19 because it should have jerked me right through the thing
20 like nothing.

21 Q My question was, whether you ever made a
22 complaint to anybody at Carl Weissman regarding the fact
23 that the safety guards were missing?

24 A No. Because I didn't know. I didn't realize
25 they had them.

1 Q Is there anything about the way the accident
2 happened that causes you to believe that Carl Weissman or
3 anybody employed by Carl Weissman intended that you be
4 injured?

5 A I think it is very wreckless to redo a crane and
6 take the safety features off of it and not put them back
7 on. That is not just aimed at me, it is aimed at anybody
8 who is greasing or operating the thing.

9 Q So it is just a matter of a general safety
10 consideration then?

11 A Yes, I would think.

12 Q That would apply to you as well as any other
13 employee in the yard who is working on that crane,
14 correct?

15 A Yes.

16 Q Other than the fact that the safety guards were
17 missing, is there anything about the way the accident
18 occurred that causes you to believe that Carl Weissman or
19 anybody employed by Carl Weissman intended that you be
20 injured?

21 MR. SKORHEIM: You are saying other than the
22 guards being removed?

23 MR. PFENNIGS: Right.

24 A Can I get that again?

25 (Whereupon, the court reporter read back the

1 requested testimony.)

2 A No, just the intentional disregard for safety.
3 Just intentional disregard for safety being the gear guards
4 were removed and never replaced.

5 Q Other than this crane in this particular
6 accident, is there anything that occurred during your
7 employment with Carl Weissman which indicates to you that
8 Carl Weissman or anybody employed by Carl Weissman intended
9 that you be injured?

10 A I did have some arguments with Jerry. This is
11 going back to where you asked if I had any argument with
12 management. I had several arguments with Jerry Weissman,
13 one was about the service truck which was important to me
14 to service this crane. It was taken to the brewery for a
15 new clutch, throw-out bearing to be put in the clutch, and
16 I never seen it again. I believe I bellyached to Jerry
17 about it, he was down in the yard one day. He told me just
18 grease it the best you can. Ongoing beefs with Jerry
19 Weissman where I had a crew in the rail yard to cut
20 railroad rail, they had a contract I believe with Canada or
21 somebody to get out all this rail. I had to get a bunch of
22 guys hired, preferably people who knew how to cut. They
23 don't know how long three feet is from four feet. I had to
24 mark their hoses with tape. Lay down the hose, cut that
25 line of rail. I take the P&H truck crane, drop it. I was

1 loading it with the crane into a big Case W24 loader.
2 Jerry seemed to think that is a waste of fuel so we had a
3 bunch of guys hired to pick the stuff up by hand and load
4 it instead of me running the crane. Out of that we got a
5 guy who dropped the railroad rail and took his toenail off,
6 that was John Lopez. I think we had some back sprains and
7 such out of that deal.

8 Then he had me lay rail out and he came down with a
9 bandsaw with a guy from the store with a portable generator
10 and electric bandsaw. They were worried about wasting too
11 much propane on the cutting torches. So he is going to
12 race me with a cutting torch with a bandsaw. Okay. So we
13 did this. I had eight cuts to his four and he was pissed.
14 Then you take a sledge hammer and hit the rail. When it is
15 hot it bends like a noodle. You got to let the rail cool
16 after you cut it. It bent like a wet noodle. First one
17 broke, the second one didn't break, just bent. On the
18 bandsaw they cut through the top webbing. Hit that, it
19 would break. Second time cut it less and less, you could
20 hit it, it didn't break. So Jerry and me were always
21 arguing with each other about the best way to do the job.
22 He is always stopping me and interfering. He made a
23 cutting machine which took three times as long to load the
24 rail on, was dangerous as hell, had a conveyer belt. Had a
25 thing, cut with a bandsaw, another hydraulic arm came down

1 and snapped the iron off. Even Mitchell laughed at it. He
2 had Mitchell come over. He told Mitchell how much do you
3 think that is worth. Mitchell said how much do you think
4 scrap iron is worth these days. Me and Jerry didn't get
5 along good.

6 Q Is there anything about any of your disputes or
7 arguments with Jerry Weissman that would indicate to you
8 that Jerry intended you be injured by that crane?

9 A Just the fact I could never get the service truck
10 back with the compressor greaser, the proper way to grease
11 equipment. I had to do it all by hand after that.

12 Q Would having the service truck available have
13 made any difference the day of the accident in the way you
14 were injured?

15 A The trouble with that was that had to be greased
16 primitively, so it really wouldn't have.

17 Q So other than the fact that you didn't have the
18 service truck is there anything about your disputes with
19 Jerry Weissman that would indicate to you that he intended
20 you be injured?

21 A No.

22 (Deposition Exhibit No. 2 marked for
23 identification.)

24 Q I hand you what has been marked as Deposition
25 Exhibit 2. I will ask if you can identify that please.

1 Weissman's address there is another date on there of
2 January 12, 1990, you see that?

3 A Yes.

4 Q Do you believe that would be about the time you
5 would have drafted and sent this letter to Carl Weissman?

6 A It must have been.

7 Q As you read through this letter on the first
8 page, the fourth paragraph it states the slip clutch spins
9 about 2400 rpm. You corrected that to be 4200 rpm?

10 A I get these figures from the OSHA man who came to
11 visit me in the hospital. He told me the bull gear on that
12 top crane runs about 700 rpm, and slip clutch runs about
13 4200 rpm.

14 Q You think maybe that number you put in there?

15 A I crossed it. That is why I am no good at
16 clerical work. I have dyslexia, I am a slow, bad reader
17 and I am a terrible speller. I am really bad on numbers, I
18 cross them.

19 Q As you read the letter is there anything else in
20 here that you now think maybe is inaccurate or incorrect?

21 A No, I forgot to add about the kerchief I had,
22 made like a tourniquet, cut my throat open a little bit. I
23 forgot about that. Other than that, no.

24 Q Now, the kerchief you are talking about is
25 described in the third full paragraph at the bottom?

1 (Whereupon, a brief recess was taken.)

2 MR. PFENNIGS: Have you had a chance to review
3 Deposition Exhibit Number 2?

4 A I am here right now. I recognize it, I wrote
5 this a long time ago I believe.

6 Q Take as much time as you need and go ahead and
7 finish reading it.

8 A All right. That is wrong. Slip clutch spins at
9 2400 rpm. It is supposed to be 4200. I have dyslexia, I
10 get things backward sometimes.

11 Q You finished reading the letter?

12 A Yes. I wrote this up quite a while ago.

13 Q Do you remember about when you might have drafted
14 this letter?

15 A I don't know the date for sure. It was after I
16 seen that Boland wasn't going to do anything about my case.

17 Q The last page of that particular exhibit is a
18 photocopy of the envelope?

19 A Yes.

20 Q Down in the lower left hand corner there appears
21 to be, says left notice, date 12 January, 1990?

22 A Yes.

23 Q You see that?

24 A Yes.

25 Q And then just to the right of the address, Carl

1 A Yes.

2 Q What you are saying, this is something that
3 happened to you, you described it in the letter, but you
4 omitted to describe it a few minutes ago when I asked
5 you?

6 A Yes, I forgot about it.

7 Q My question, is there anything else in this
8 letter as you read it now that you think is inaccurate or
9 incorrect?

10 A I don't think so.

11 Q Turn to page 2 of that letter, please. The very
12 top of page 2 there is a sentence there. What does that
13 state?

14 A If the state workers' comp.

15 Q One more line.

16 A Act of negligence and non-compliance.

17 Q Following that you have some complaints against
18 the state workers' comp division, is that correct?

19 A Yes.

20 Q And Weissmans?

21 A Yes.

22 Q And I guess it would be the second full paragraph
23 of page 2 states Weissmans is guilty of gross negligence
24 and of non-compliance of both OSHA and state workers' comp
25 rules and regulation as well as the safety standards. Do

1 you see that?

2 A Yes.

3 Q That was your feeling in 1990 at the time you
4 wrote this letter that Weissmans was guilty of gross
5 negligence?

6 A That was my feeling then, but it should be
7 changed to deliberate, Weissmans is guilty of deliberate
8 reckless endangerment in my opinion.

9 Q Your opinion has changed based on what facts?

10 A Based on the negligence clause covered by
11 workers' comp and intentional act. The gear guards were
12 intentionally taken off and never put back on. That is an
13 intentional act. The reckless endangerment, recklessly
14 endangering any operator, anyone who greases it, anyone who
15 runs it. That is the intentional endangerment of the whole
16 thing.

17 Q That intentional endangerment as you described it
18 just didn't apply to you, it applied to anybody who worked
19 on that particular piece of machinery, correct?

20 A Yes. Anybody who worked on it, and particularly
21 the operators.

22 Q Other than the fact that the gear guards were
23 left off, are there any other facts that you are aware of,
24 or which you believe indicate that Carl Weissman or anybody
25 employed by Carl Weissman intended that you be injured?

1 Q I believe it is your testimony earlier that is
2 how he showed you to grease the gear?

3 A That is how I was showed, yes. Other than that,
4 you mean what proof do I have to prove this?

5 Q The facts, right.

6 A There was someone in the yard cutting iron with
7 me that day. I don't know if they heard it or not. I have
8 been trying to find out who it was. The trouble is I don't
9 remember the date he told me this, the time, there are so
10 many people that have worked there and gone, I am still
11 trying to get ahold of Dave Zook, Dave Ramstad, Larry
12 Vaughn, these are all guys who worked in the front yard
13 cutting iron with me. I can't say for sure if they heard
14 him say that to me, but I am still trying to find them.
15 Other than that, there is me and Mitchell.

16 Q The employee you are looking for, you say you
17 don't know whether he heard him say that. Are you talking
18 about when Mitchell instructed you on greasing the gear?

19 A Yes.

20 Q So other than the things we talked about this
21 morning, talking about the instructions you received on
22 greasing the gear and the removal of the gear guards prior
23 to the time you became employed at Carl Weissman the second
24 time. Other than those two things?

25 A Right.

1 A I would have to say no.

2 Q Looking at your amended complaint, there are
3 several allegations that I would just like to review with
4 you real quickly. You have been handed what is filed with
5 the court as your Amended Complaint and Jury Demand. Turn
6 to the second page of that and turn to paragraph number 3.

7 A Yes.

8 Q You see that particular paragraph?

9 A Yes.

10 Q In that paragraph the first sentence alleges that
11 the defendant knowingly and intentionally removed the gear
12 guards from the crane before the plaintiff was employed by
13 the defendant. We discussed that today, haven't we?

14 A Yes.

15 Q And the guards were removed prior to the time you
16 became employed by Carl Weissman the second time, is that
17 correct?

18 A That's correct.

19 Q And the second sentence says defendant knowingly
20 and intentionally placed the plaintiff in a position of
21 extreme danger by ordering plaintiff to grease the gears of
22 the crane while it was still running. What facts do you
23 have that support that allegation?

24 A I wasn't ordered. I was told to. I don't
25 consider it an order. Mr. Mitchell and I are friends.

1 Q Are you aware of any other facts that indicate
2 that defendant knowingly and intentionally placed you in a
3 position of danger?

4 A The operator of the crane was placed in a
5 reckless and dangerous situation any time he was running
6 it. It doesn't just conspire to me, it goes to anybody.
7 Other than purposely, I don't believe so. Not putting gear
8 guards back on to me constitutes intentional reckless
9 endangerment.

10 Q You say purposely, so you mean that you don't
11 believe Carl Weissman purposely meant for you to get hurt?

12 A I will have to say no, I guess.

13 Q In paragraph number 4 you allege as a result of
14 the foregoing the defendant intended the plaintiff should
15 undergo the injury. You see that particular sentence?

16 A Yes.

17 Q Once again, other than the things we have talked
18 about this morning, the way you were instructed or showed
19 to grease the crane and the fact that the gear guards had
20 been removed, are you aware of any other facts which
21 support this allegation that the plaintiff intended that
22 you should undergo the injury?

23 A I think what that means, that the defendant put
24 the employee in exposure to a harmful situation on a daily
25 basis.

1 Q All right.

2 A It voids all safety measures. I had no idea the

3 gear guards were supposed to be on there, or how the proper

4 proccdure is to grease the crane. I had no idca about any

5 of this stuff until I went and investigated myself.

6 Q And I understand that. My question is whether,

7 other than those two things, the way you were instructed,

8 or showed to grease the crane and removal of the gear

9 guards, are you aware of any other facts that indicate to

10 you that Carl Weissman or anybody employed by Carl Weissman

11 intended you should undergo the injury as you allege in

12 your complaint?

13 A I don't believe so.

14 MR. PFENNIGS: No further questions.

15 MR. SKORHEIM: I don't have anything.

16 WITNESS EXCUSED

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1 CERTIFICATE OF REPORTER
STATE OF MONTANA

2 County of Cascade)

3

4 I, Jack L. Fletcher, Registered Professional

5 Reporter and Notary Public for the State of Montana,

6 residing in Great Falls, Montana, do hereby certify:

7 That I was duly authorized to and did report the

8 deposition of John Hubbard in the above-entitled cause;

9 That the reading and signing of the deposition by

10 the witness have been expressly reserved. That the

11 foregoing pages of this deposition constitute a true and

12 accurate transcription of my stenotype notes of the

13 testimony of said witness.

14 I further certify that I am not an attorney nor

15 counsel connected with the action, nor financially

16 interested in the action.

17 IN WITNESS WHEREOF, I have hereunto set my hand and

18 seal on this the 15th day of March 1999.

19

20 _____
Jack L. Fletcher
Registered Professional Reporter
Notary Public, State of Montana
Residing in Great Falls, Montana.
My Commission Expires: 7-20-99

21

22

23

24

25

1 CERTIFICATE OF WITNESS

2 PAGE LINE CORRECTION

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12

13 I hereby certify that this is a true and correct

14 copy of my testimony, together with any changes I have made

15 on this and any subsequent pages attached hereto.

16 Dated on this the ____ day of _____ 1999.

17

18

19 _____
John Hubbard, Deponent.

20

21 SUBSCRIBED AND SWORN to before me this ____ day of

22 _____ 1999.

23

24 _____
NOTARY PUBLIC FOR THE STATE OF MONTANA
Residing in Great Falls, Montana

25 My commission Expires: _____