

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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LAC COURTE OREILLES BAND OF  
LAKE SUPERIOR CHIPPEWA INDIANS;  
RED CLIFF BAND OF LAKE SUPERIOR  
CHIPPEWA INDIANS; SOKAOGON  
CHIPPEWA INDIAN COMMUNITY;  
ST. CROIX CHIPPEWA INDIANS OF  
WISCONSIN; BAD RIVER BAND OF THE  
LAKE SUPERIOR CHIPPEWA INDIANS;  
and LAC DU FLAMBEAU BAND OF  
LAKE SUPERIOR CHIPPEWA INDIANS,

Plaintiffs,

v.

Case No. 74-C-313-C

STATE OF WISCONSIN, WISCONSIN  
NATURAL RESOURCES BOARD,  
CATHY STEPP, KURT THIEDE and  
TIM LAWHERN,

Defendants.

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SECOND AFFIDAVIT OF RANDALL STARK

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STATE OF WISCONSIN     )  
  ) ss.  
COUNTY OF DANE         )

Randall Stark, being first duly sworn on oath, deposes and says:

1. I make this affidavit on the basis of my own personal knowledge.
2. In the course of my career, I have been involved in investigating and have reviewed reports from wardens investigating instances where a person was shot, and in some cases killed, by another person hunting deer when the shooter either misidentified the victim as a deer, or could not or did not identify the victim beyond the target deer because of terrain, vegetation, or reduced light conditions.

3. On December 6, 2012, I directed a search of the International Hunter Education Association (IHEA) Hunter Incident Clearinghouse, an on-line database that includes yearly information submitted by the Wisconsin Department of Natural Resources (WDNR) and other states' equivalent agencies. The search revealed 44 incidents for the date range 1989 through 2009 based on the following search criteria:

- a. State of Wisconsin
- b. Species Hunted – Deer
- c. Two-party Incident
- d. Major Factor (As Determined by Investigating Officer) – Failure to

Identify target. A print out generated by this search is attached as Exhibit B.

4. I have reviewed the WDNR Hunting Incident Synopsis using the same criteria as above for the years 2010 to 2012. I identified two additional incidents in Wisconsin for this date range. A copy of the synopsis for 2012 is attached as Exhibit C.

5. In my professional opinion, and upon review of available data, misidentification of the target and failure to identify persons in the line of fire is a public safety concern associated with deer hunting. I am aware that the State of Wisconsin has invested significant effort to mitigate this safety concern to the extent possible.

6. I have seen and read Great Lakes Indian Fish and Wildlife Commission (GLIFWC) Order No. 2012-05 (Commission Order), which amends the Tribes' night hunting regulation for deer in the Wisconsin portion of the 1837 and 1842 ceded territory.

7. In my professional opinion, the night hunting regulations contemplated under the Commission Order do not adequately mitigate the public safety concerns of misidentification of the target or identification of persons in the line of fire.

8. I believe that the public safety concerns related to night hunting of deer by Tribal members is greater than night hunting of wolf by hunters. Specifically:

a. I believe that many more incidents of shots being fired in the darkness, with the associated public safety implications, will occur under the proposed Tribal night hunting program. Specifically:

- i. To date, registration records indicate 104 of a total quota of 116 wolves have been harvested in the state. Sixty of these wolves (57.7%) were trapped.
- ii. To date, three of the six Wolf Harvesting Zones in the state are closed.
- iii. Since night hunting of wolves in the state opened on November 26, 2012, only one wolf was registered as having been shot after normal daytime hunting hours, at approximately 5:00 pm in Barron County. On the day the wolf was harvested, hunting hours in Barron County ended at 4:43 pm. The wolf was harvested 13 minutes before Tribal hunters would be allowed to hunt deer at night under the Commission Order.
- iv. Wisconsin wolf hunters are limited to a single license that allows them to harvest a single wolf during that license year.
- v. To my knowledge, there is no individual Tribal bag limit on deer, and the only limit on the total harvest is one half of an established quota in a Deer Management Unit.

vi. In 2010, there were 1,869 Tribal hunters from the Plaintiff Tribes. Plaintiff's Ex. 1 at 5.

b. I believe that the geographic concentration of successful Tribal deer hunters in seven counties within the Ceded Territories presents a safety concern as compared to the concentration of wolf hunters distributed across the primary wolf range in Wisconsin. Specifically:

i. In 2010, 1,152 deer, or 80% of the total Wisconsin Tribal harvest occurred in seven counties. These counties are all within the Ceded Territories: Bayfield, Burnett, Douglas, Oneida, Sawyer, Vilas, and Washburn. Plaintiff's Ex. 1 at 13.

ii. The Wisconsin wolf harvest takes place statewide in six management zones. To date, in the seven counties in the Ceded Territories where 80% of the Tribal deer harvest is concentrated, twelve total wolves have been taken by firearm, and registration records indicate none of these were taken after normal daytime hunting hours.

c. I believe that the temporal concentration of successful Tribal deer hunters within the Ceded Territories, presents a safety concern in relation to other Tribal hunters and other people engaged in a variety of outdoor recreational pursuits.

i. In 2010, 67% of the total Tribal harvest occurred between September 7th and November 19th, before the Tribes' Middle Deer Season that year. Plaintiffs' Exhibit 1 at 18.

- ii. In 2013, the proposed Tribal night hunting program contemplates beginning on October 15. Plaintiffs' Ex. 25.
- iii. The combination of this concentrated harvest effort during a period in which there is a higher presence of the public engaged in outdoor recreation, such as trappers, dog trainers and other outdoor users, creates increased safety concerns.

9. To my knowledge, no state regulatory scheme allows the night hunting of deer or hunting deer with the aid of an artificial light. Specifically, the states of Vermont, North Dakota, South Dakota, Michigan, Oregon, Mississippi, and Florida do not allow the practice. I have contacted the natural resources law enforcement executives in all of these states, with the exception of Mississippi, and they have confirmed that the practice is not allowed. Furthermore, I have directed staff to research Mississippi law and regulations on the subject, and have been advised that the practice of night hunting of deer or hunting deer with the aid of an artificial light is not allowed.

Dated this 7th day of December, 2012.

/s/ Randall Stark

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RANDALL STARK

Subscribed and sworn to before me  
this 7th day of December, 2012.

/s/ Quinn Williams

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Notary Public, State of Wisconsin  
My Commission: is permanent.

# HUNTER INCIDENT CLEARINGHOUSE



PENGAD-Bayonne, N.J.

**EXHIBIT**  
**B**  
**STARK 2**

Showing 44 of 44 incidents found matching your query Query time: 0.00131893157959

Date	State	Animal Hunted	Class	Casualty Type	Self Inflicted	Equipment	Shooter Age(s)	Victim Age(s)	Shooter Violation	Victim Violation	Major Factor
1989-11-18	Wisconsin	Deer	A ?	Fatal	N	Rifle	23	25	Y	N	Failure to identify target
1989-11-21	Wisconsin	Deer	A ?	Nonfatal	N	Rifle	37	29	Y	Y	Failure to identify target
1989-11-26	Wisconsin	Deer	A ?	Nonfatal	N	Rifle	23	33	N	N	Failure to identify target
1991-11-29	Wisconsin	Deer	A ?	Nonfatal	N	Rifle	18	6	N	N	Failure to identify target
1991-11-29	Wisconsin	Deer	A ?	Fatal	N	Rifle	27	26	N	N	Failure to identify target
1991-11-30	Wisconsin	Deer	A ?	Nonfatal	N	Rifle	30	31	N	N	Failure to identify target
1991-12-07	Wisconsin	Deer	A ?	Nonfatal	N	Rifle	38	39	Y	N	Failure to identify target
1991-12-15	Wisconsin	Deer	A ?	Nonfatal	N	Rifle	30	26	Y	Y	Failure to identify target
1992-11-28	Wisconsin	Deer	A ?	Nonfatal	N	Shotgun	18	21	N	N	Failure to identify target
1993-10-03	Wisconsin	Deer	A ?	Fatal	N	Shotgun	21	37	Y	N	Failure to identify target
1994-11-08	Wisconsin	Deer	A ?	Nonfatal	N	Crossbow	44	42	Y	N	Failure to identify target
1994-11-19	Wisconsin	Deer	A ?	Fatal	N	Shotgun	15	47	Y	N	Failure to identify target
1994-11-19	Wisconsin	Deer	A ?	Nonfatal	N	Shotgun	42	42	Y	N	Failure to identify target
1994-11-19	Wisconsin	Deer	A ?	Nonfatal	N	Rifle	36	58	N	N	Failure to identify target
1994-11-25	Wisconsin	Deer	A ?	Fatal	N	Shotgun	44	41	N	N	Failure to identify target
1995-09-24	Wisconsin	Deer	A ?	Nonfatal	N	Bow	14	12	N	N	Failure to identify target
1995-11-25	Wisconsin	Deer	A ?	Nonfatal	N	Rifle	53	23	N	N	Failure to identify target
1996-09-22	Wisconsin	Deer	A ?	Nonfatal	N	Bow	28	17	N	N	Failure to identify target
1996-11-26	Wisconsin	Deer	A ?	Fatal	N	Shotgun	55	49	Y	N	Failure to identify target
1997-11-09	Wisconsin	Deer	A ?	Fatal	N	Bow	12	27	N	N	Failure to identify target

1997-11-23	Wisconsin	Deer	A ?	Nonfatal	N	Handgun	50	47	Y	Y	target Failure to identify target
1998-11-21	Wisconsin	Deer	A ?	Fatal	N	Rifle	20	47	Y	N	Failure to identify target
1998-11-29	Wisconsin	Deer	A ?	Fatal	N	Rifle	44	71	Y	N	Failure to identify target
2000-11-04	Wisconsin	Deer	A ?	Nonfatal	N	Rifle	14	23	Y	Y	Failure to identify target
2000-11-20	Wisconsin	Deer	A ?	Nonfatal	N	Rifle	53	51	Y	N	Failure to identify target
2000-12-10	Wisconsin	Deer	A ?	Nonfatal	N	Shotgun	30	53	N	N	Failure to identify target
2001-10-27	Wisconsin	Deer	A ?	Nonfatal	N	Shotgun	40	50	Y	N	Failure to identify target
2001-11-17	Wisconsin	Deer	A ?	Fatal	N	Shotgun	14	21	N	N	Failure to identify target
2001-12-01	Wisconsin	Deer	A ?	Fatal	N	Rifle	43	47	N	N	Failure to identify target
2002-11-23	Wisconsin	Deer	A ?	Nonfatal	N	--unknown-		45	N	N	Failure to identify target
2002-11-23	Wisconsin	Deer	A ?	Nonfatal	N	Shotgun	19	34	N	N	Failure to identify target
2002-11-23	Wisconsin	Deer	A ?	Nonfatal	N	Shotgun	44	66	N	N	Failure to identify target
2002-11-23	Wisconsin	Deer	A ?	Nonfatal	N	Rifle		55	N	N	Failure to identify target
2002-11-30	Wisconsin	Deer	A ?	Nonfatal	N	Rifle	27	30	N	N	Failure to identify target
2003-11-23	Wisconsin	Deer	A ?	Fatal	N	Shotgun	41	33	N	N	Failure to identify target
2003-12-14	Wisconsin	Deer	A ?	Nonfatal	N	Shotgun	20	41	Y	N	Failure to identify target
2005-10-28	Wisconsin	Deer	A ?	Nonfatal	N	Rifle	39	29	Y	N	Failure to identify target
2005-11-21	Wisconsin	Deer	A ?	Nonfatal	N	Shotgun	38	41	Y	N	Failure to identify target
2005-11-26	Wisconsin	Deer	A ?	Nonfatal	N	Shotgun	81	14	Y	N	Failure to identify target
2006-11-05	Wisconsin	Deer	A ?	Fatal	N	Rifle	20	19	Y	N	Failure to identify target
2006-11-25	Wisconsin	Deer	A ?	Nonfatal	N	Shotgun	18	72	N	N	Failure to identify target
2006-11-25	Wisconsin	Deer	A ?	Fatal	N	Rifle	25	49	N	N	Failure to identify target

2007-11-18	Wisconsin	Deer	A ?	Fatal	N	Rifle	63	18	N	N	Failure to Identify target
2009-11-28	Wisconsin	Deer	A ?	Nonfatal	N	Rifle		59	N	N	Failure to Identify target

**Searching on the following values:**

**Year:**

All Years

**State:**

Wisconsin

**Animal Hunted By Shooter:**

Deer

**Casualty Type:**

All Casualty Types

**Major Factor:**

Hunter's Judgment - Failure to identify target

**Classification: (what's this?)**

All Classifications

**Self Inflicted:**

N

**Land Type:**

All

**Shooter & Victim in Same Party:**

All

**Type of Shooting:**

Hunting

**Treestand Used:**

All

**Equipment:**

All Equipment

**Date Range:**

From: -- To: --

**The Hunter Incident Clearinghouse**

A project of the International Hunter Education Association in association with:  
 The U.S. Fish and Wildlife Service: Wildlife Restoration Act,  
 International Association of Fish and Wildlife Agencies,  
 National Wild Turkey Federation,  
 Silvertip Productions, Ltd..



## 2012 GUN DEER HUNTING INCIDENT SYNOPSIS

Type of Incident  
SI = Self Inflicted Injury  
SP = Shooter & Victim in Same Party

No.	Date	Time	County	Injury Description	Fatal	S.I. S.P.	Cause - Circumstances (Hunting Method)	Age/Sex of Shooter Hunter Ed Grad	Age/Sex of Victim Hunter Ed Grad	Type of Firearm
1	11/17/2012	7:30AM	Manitowoc	Right hand pass through causing tissue damage and broken bones	No	neither	Shooter was one of two posters in deer drive. Victim was in a different hunting party walking approximately 246 yds from shooter. Shooter saw two deer running and shot five times. Victim was out of sight due to elevation change. Possible ricochet.	17 Yr. M ?	67 Yr. M ?	12 Gauge Semi-Auto Action Shotgun
2	11/18/2012	0:00AM/ PM	Portage	Gunshot wound in subjects right arm from .35 caliber rifle without pass through	No	SP	Victim and shooter were both deer hunting from enclosed tower type stands. Approximately 150 yds from each other. Shooter observed two deer step out from behind trees on trail which led to victim's stand. Shooter shot one deer. Victim had been shot in arm. Most likely from the <i>ricochet</i> of the shooter's bullet.	44 Yr. F ?	49 Yr. M ?	.35 Caliber Lever Action Rifle
3	11/18/2012	3:41PM	Columbia	Single shot to right index finger	No	SI	Victim/Shooter attempting to get into a hang on tree stands 6.5 ft off the ground hanging on to his gun in his right hand when it slipped. He caught the gun again with his right index finger over the muzzle. The gun discharged and he immediately dropped the gun and jumped/fell to the ground.	45 Yr. M ?	Same	.30-30 Caliber Lever Action Rifle

## 2012 GUN DEER HUNTING INCIDENT SYNOPSIS

Type of Incident  
 SI = Self Inflicted Injury  
 SP – Shooter & Victim in Same Party

No.	Date	Time	County	Injury Description	Fatal	S.I. S.P.	Cause – Circumstances (Hunting Method)	Age/Sex of Shooter Hunter Ed Grad	Age/Sex of Victim Hunter Ed Grad	Type of Firearm
4	11/19/2012	0:00AM/ PM	Douglas	Gunshot wound to the head	YES	SP	Shooter and victim hunting together, shooter turned and saw deer. Shooter picks up rifle and finds what he believes to be a deer in the scope and fires one round. Shooter waits several minutes and goes to look for deer. Shooter finds victim on ground with gunshot wound.	31 Yr. M ?	27 Yr. M ?	.280 Caliber Break Action Rifle
5	11/21/2012	0:00 AM/PM	Monroe	Gunshot wound to right bicep	No	SP	Victim and shooter were participating in deer drive. Victim had shot a buck during drive. Shooter said he saw what he believed to be antlers in the marsh grass. Shooter shot once hitting victim in the arm.	54 Yr. M ?	50 Yr. M ?	.270 Caliber Bolt Action Rifle
6	11/22/2012	0:00 AM/PM	Sawyer	Gunshot wound through and through entering the left tricep and exiting the bicep	No	SI	Victim shot at a deer. Victim got up to look for blood and forgot to put the safety back on. Victim attempted to step over the down log when the victim tripped causing the firearm to discharge. The victim was struck by the discharge to the left bicep area near armpit.	35 Yr. F ?	Same	.308 Caliber Semi-Auto Action Rifle
7	11/24/2012	8:45AM	Chippewa	Gunshot to upper left chest bullet hit top of lung, bullet did not exit the body.	No	SP	Shooter and victim were both drivers in a deer drive. During the drive a deer ran into the drive between both shooter and victim. Shooter fired 2 shots at the deer. Second shot struck the victim in the left shoulder	14 Yr. M ?	49 Yr. M ?	.308 Caliber Bolt Action Rifle

## 2012 GUN DEER HUNTING INCIDENT SYNOPSIS

**Type of Incident**  
 SI = Self Inflicted Injury  
 SP = Shooter & Victim in Same Party

No.	Date	Time	County	Injury Description	Fatal	S.I. S.P.	Cause - Circumstances (Hunting Method)	Age/Sex of Shooter Hunter Ed Grad	Age/Sex of Victim Hunter Ed Grad	Type of Firearm
area.										